TEXAS REGISTER

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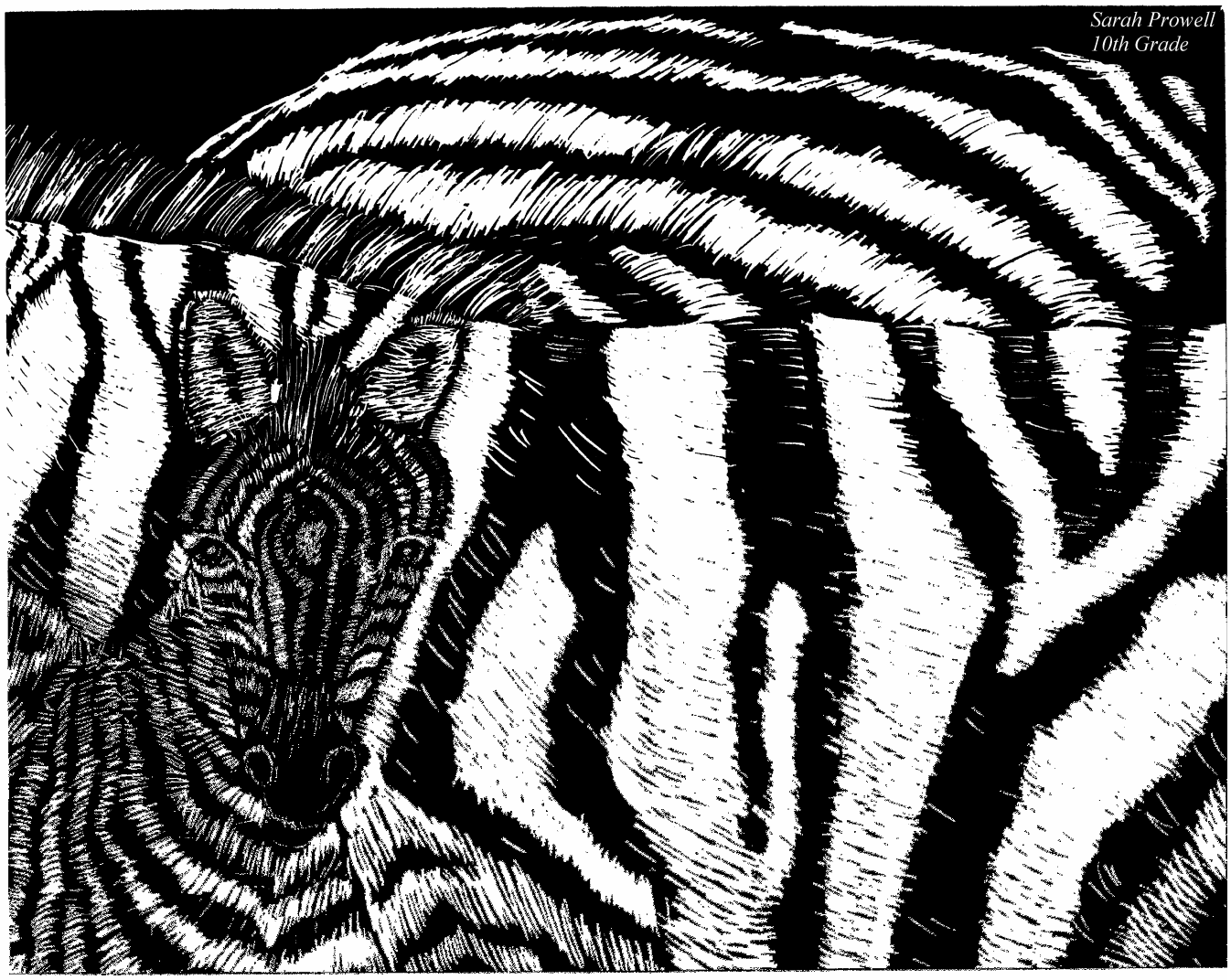

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

WITHDRAWN RULES

ADOPTED RULES

TABLES AND GRAPHICS

IN ADDITION

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 463-5561 in Austin. For out-of-town callers our toll-free number is 800-226-7199. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/opinopen/opengovt.shtml

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.state.tx.us/

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for February 6, 2007

Appointed as the Student Regent for the Texas A&M University System for a term to expire February 1, 2008, Cassidy Ann Daniel of Canyon. Ms. Daniel is replacing Tyson T. Voelkel of College Station whose term expired.

Appointed as the Student Regent for Midwestern State University for a term to expire February 1, 2008, Jason A. York of Wichita Falls. Mr. York will replace James W. "Will" Morefield of Wichita Falls whose term expired.

Appointed as the Student Regent for the University of Texas System for a term to expire February 1, 2008, Randal Matthew Camarillo of Houston. Replacing Brian Haley of Corinth whose term expired.

Appointed as the Student Regent for the Stephen F. Austin State University for a term to expire February 1, 2008, Stephanie Tracy of Nacogdoches. Ms. Tracy is being reappointed.

Appointed as the Student Regent for Texas Tech University System for a term to expire February 1, 2008, Ebtesam Attaya Islam of Lubbock. Mr. Islam is replacing Chad Allen Greenfield of Lubbock whose term expired.

Appointed as the Student Regent for Texas Woman's University for a term to expire February 1, 2008, Christianne Kellett of Arlington. Ms. Kellett is replacing Rachal E. Salter of Dallas whose term expired.

Appointed as the Student Regent for the University of Houston for a term to expire February 1, 2008, Christopher Sharpe of Houston. Mr. Sharpe is replacing Robert Barnard Johnson of San Antonio whose term expired.

Appointed as the Student Regent for Texas State University System for a term to expire February 1, 2008, Magdalena Manzano of Houston. Replacing Francis E. Bartley of San Marcos whose term expired.

Appointed as the Student Regent for the University of North Texas for a term to expire February 1, 2008, Diana Schulz of Fort Worth. Ms. Schulz is replacing Brittany Adams of Mesquite whose term expired.

Appointments for February 7, 2007

Appointed to the Texas Southern University Board of Regents for a term to expire February 1, 2013, Richard Salwen of Austin (replacing J. Paul Johnson of Fresno whose term expired).

Appointed to the Texas Southern University Board of Regents for a term to expire February 1, 2013, Richard Holland of Plano (replacing Gerald Wilson of Houston whose term expired).

Appointed to be Executive Commissioner of the Health and Human Services Commission for a term to expire February 1, 2009, Albert Hawkins, III of Austin. Mr. Hawkins is being reappointed.

Appointed as Texas State Historian, pursuant to SB 1787, 78th Legislature, Jesus F. de la Teja of Austin. He retains the designation for two years from the date of the honoring ceremony.

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2009, Joe Bontke of Houston (Reappointment).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2009, Daphne Brookins of Fort Worth (Reappointment).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2009, David A. Fowler of Katy (Reappointment).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2009, Roland Guzman of San Antonio (Reappointment).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2009, Brian D. Shannon of Lubbock (Reappointment).

Appointed to the Governor's Committee on People with Disabilities for a term to expire February 1, 2009, Shane Whitehurst of Austin (Reappointment).

Appointments for February 12, 2007

Appointed to be District Attorney of the 29th Judicial District, Palo Pinto County, for a term until the next General Election and until his successor shall be duly elected and qualified, Michael Kent Burns of Mineral Wells. Mr. Burns is replacing Tim Ford who resigned.

Appointed as Judge of the 434th Judicial District Court, Fort Bend County, pursuant to SB 1189, 79th Legislature, Regular Session, for a term until the next General Election and until his successor shall be duly elected and qualified, James H. Shoemake of Missouri City.

Appointed to be a member of the Texas Physician Assistant Board for a term to expire February 1, 2011, Richard R. Rahr, Ed.D. of Texas City. Dr. Rahr is replacing Al Bendeck of Lubbock whose term expired.

Appointed to be a member of the State Board for Educator Certification for a term to expire February 1, 2013, Jill Jolynn Harrison Druesedow of Haskell (replacing Adele Quintana of Benbrook whose term expired).

Appointed to be a member of the State Board for Educator Certification for a term to expire February 1, 2013, Homer Dean Treviño of Waco (replacing Troy Simmons, DDS of Longview whose term expired).

Appointed to be a member of the Crime Stoppers Advisory Council for a term to expire September 1, 2008, Emerson Frederick Lane, Jr. of Victoria. Mr. Lane is replacing Tina Alexander Sellers of Lufkin who resigned.

Appointed to be a member of the Automobile Theft Prevention Authority for a term to expire February 1, 2013, Richard L. Watson of Spicewood. Mr. Watson is replacing Borris Miles of Houston who resigned.

Appointed to be a member of the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2008, Janet R. Boone

of North Zulch (replacing Timothy Taylor of Nacogdoches whose term expired).

Appointed to be a member of the On-Site Wastewater Treatment Research Council for a term to expire September 1, 2008, Janet Dee Meyers of Aubrey (Ms. Meyers is being reappointed).

Appointed to be a member of the One Call Board for a term to expire August 31, 2009, Christopher J. Rourk of Dallas. Mr. Rourk is replacing Dexter Keyes of Killeen whose term expired.

Appointed to be a member of the Governing Board of the Texas School for the Blind and Visually Impaired for a term to expire January 31, 2011, Robert K. Peters of Tyler (replacing Mary Sue Welch of Dallas whose term expired).

Appointed to be a member of the Governing Board of the Texas School for the Blind and Visually Impaired for a term to expire January 31, 2011, Caroline Kupstas Daley of Kingwood (replacing Toby Galindo of San Angelo whose term expired).

Appointed to be a member of the Governing Board of the Texas School for the Blind and Visually Impaired for a term to expire January 31, 2011, Deborah Louder of San Angelo (Reappointment).

Appointed to be a member of the Governing Board of the Texas School for the Blind and Visually Impaired for a term to expire January 31, 2013, Michelle DeAnn Goodwin of Fort Worth (replacing Janet Ardoyno of Abilene who resigned).

Appointed to be a member of the Texas Council on Purchasing from People with Disabilities for a term to expire January 31, 2013, James Michael Daugherty of Irving. Mr. Daugherty is replacing Kevin Karnes of Dallas whose term expired.

Appointed to be a member of the Texas Board of Pardons and Paroles for a term to expire February 1, 2013, Conrith W. Davis of Sugar Land. Mr. Davis is being reappointed.

Rick Perry, Governor

TRD-200700491

THE ATTORNEY GENERAL

The *Texas Register* publishes summaries of the following: Requests for Opinions, Opinions, Open Records Decisions.

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

An Attorney General Opinion is a written interpretation of existing law. The Attorney General writes opinions as part of his responsibility to act as legal counsel for the State of Texas. Opinions are written only at the request of certain state officials. The Texas Government Code indicates to whom the Attorney General may provide a legal opinion. He may not write legal opinions for private individuals or for any officials other than those specified by statute. (Listing of authorized requestors: http://www.oag.state.tx.us/opinopen/opinhome.shtml.)

Request for Opinions

RQ-0566-GA

Requestor:

The Honorable Jose R. Rodriguez

El Paso County Attorney

County Courthouse

500 East San Antonio, Room 503

El Paso, Texas 79901

Re: Authority of a home-rule city to lease or convey real property to an independent school district (RQ-0566-GA)

Briefs requested by March 9, 2007

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200700489
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: February 14, 2007

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Opinions

Opinion No. GA-0510

The Honorable Tanya S. Davis

Cooke County Attorney

3rd Floor, Courthouse

Gainesville, Texas 76240

Re: Whether the conflict of interest provisions in Chapter 171 of the Local Government Code prohibit a county constable from owning and operating a wrecker service that is on the county sheriff's wrecker rotation list (RQ-0487-GA)

S U M M A R Y

The conflict of interest provisions in chapter 171 of the Local Government Code do not prohibit a county constable from owning and operating a wrecker service that is on the county sheriff's wrecker rotation list.

Opinion No. GA-0511

The Honorable Kurt Sistrunk

Galveston County Criminal District Attorney

600 59th Street, Suite 1001

Galveston, Texas 77551-4137

Re: Whether the Open Meetings Act, Government Code chapter 551, permits a governmental body to admit selected members of the public into a closed meeting (RQ-0496-GA)

S U M M A R Y

Notice of a meeting subject to the Open Meetings Act must be sufficiently specific to inform the general public of the subjects to be considered during the meeting, with more specificity for a subject that is of special interest to the public. The Act does not require the notice of a closed meeting to cite the section or subsection numbers of provisions authorizing the closed meeting.

The Open Meetings Act, Government Code chapter 551, does not permit a governmental body to admit members of the public to a closed meeting to give input regarding a public officer or employee. Based on the facts provided, the portions of a "closed" meeting attended by members of the public were "not permitted" within section 551.144(a).

Opinion No. GA-0512

The Honorable Rodney Ellis

Chair, Committee on Government Organization

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether the Texas Department of Criminal Justice may adopt a rule or policy requiring mandatory testing of incoming offenders for human immunodeficiency virus (RQ-0518-GA)

S U M M A R Y

The Texas Board of Criminal Justice is authorized to adopt a rule or policy requiring mandatory testing for human immunodeficiency virus of incoming offenders in both the institutional division and the state jail division.

Opinion No. GA-0513

The Honorable Mark F. Pratt

Hill County Attorney

Post Office Box 253

Hillsboro, Texas 76645

Re Whether a county may improve a subdivision road under the authority of a statute other than Transportation Code chapter 253 (RQ-0521-GA)

S U M M A R Y

Where a county accepts in writing a public road dedication made in a subdivision plat in conformity with Transportation Code chapter 281, such acceptance is effective to make the roads county roads, even though the county also refuses at the same time to maintain or improve the roads. Thus, where Hill County has already acquired a public interest in a subdivision road by dedication, the county need not comply with Transportation Code chapter 253, which is an alternative to chapter 281 and is applicable only in the situation in which a county has not acquired a public interest in a subdivision road.

Opinion No. GA-0514

The Honorable Royce West

Chair, Committee on Intergovernmental Relations

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether a city may designate as a reinvestment zone under Tax Code section 311.005(a)(5) an area that is not "unproductive, underdeveloped, or blighted" if no bonds or notes are issued to finance the area's development or redevelopment RQ-0442-GA)

S U M M A R Y

A city may not designate an area as a reinvestment zone under Tax Code section 311.005(a)(5) unless the area is "unproductive, underdeveloped, or blighted" within the meaning of article VIII, section 1-g(b) of the Texas Constitution, even if the area's plan of tax increment financing does not include issuance of bonds or notes.

Opinion No. GA-0515

The Honorable Roy DeFriend

Limestone County and District Attorney

Limestone County Courthouse

200 West State Street, Suite 110

Groesbeck, Texas 76642

Re: Whether a bail bond may be accepted in a Texas county for a person jailed in another state (RQ-0512-GA)

S U M M A R Y

A Texas sheriff has no authority to accept bail for an offense committed in the sheriff's county if the accused is jailed in another state.

Opinion No. GA-0516

The Honorable Geraldine "Tincy" Miller

Chair, State Board of Education

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Appropriate calculation of the market value of the permanent school fund for making distributions to the available school fund (RQ-0448-GA)

S U M M A R Y

Because section 43.020 of the Education Code requires the State Board of Education to use the accrual accounting method to determine distributions to the available school fund, the Board may not administratively adopt another accounting method to determine the permanent school fund's market value to calculate the available school fund distribution under Texas Constitution article VII, section 5(a)(1). Article VII, section 5(a)(1) requires the permanent school fund's market value to exclude funds held by the School Land Board in the state treasury for purchasing additional real property.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200700480

Stacey Napier

Deputy Attorney General

Office of the Attorney General

Filed: February 14, 2007

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 87. NOTARY PUBLIC

SUBCHAPTER E. NOTARY RECORDS

1 TAC §87.60

The Office of the Secretary of State proposes new §87.60, prohibiting the recording of personal information in a notary public's record book. The purpose of the new rule is to prevent identity theft using information obtained from a notary's record book

Section 406.014(a)(5) of the Texas Government Code requires a notary public other than a court clerk notarizing instruments for the court to keep in a book a record of whether the signer, grantor, or maker of a document is personally known by the notary public, was identified by an identification card issued by a governmental agency or a passport issued by the United States, or was introduced to the notary public and, if introduced, the name and residence or alleged residence of the individual introducing the signer, grantor, or maker.

Section 406.014(a)(5) does not require that the personal information on the identification card be recorded in the notary's book. However, notaries public have recorded information, such as the driver's license number, in their notary record books. Section 406.014(b) states "entries in the notary's book are public information." In addition, §406.014(c) specifies that "a notary public shall, on payment of all fees, provide a certified copy of any record in the notary public's office to any person requesting the copy." Consequently, based on the preceding, any member of the public may obtain a copy of any page in a notary's record book. If such page contains personal identification information, that information could be used to facilitate the theft of a person's identity. The new rule will prohibit the recording of the personal identifying information contained on the identification card and would help thwart identity theft.

Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section, has determined that for the first five year period that the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing the new rule. There is no effect on large businesses, small businesses or micro-businesses. There is no additional economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Mr. Joyner also has determined that for each year of the first five years that the new rule is in effect the public benefit anticipated as a result of enforcing the rule will be to prevent the use of public information law to obtain an individual's personal identification information to commit the theft of such individual's identity.

Comments on the proposed new section may be submitted to Guy Joyner, Chief, Legal Support Unit, Statutory Documents Section, P.O. Box 12887, Austin, Texas 78711-2887.

The new section is proposed under the Texas Government Code, §406.023(a) and §2001.004(1), which provide the Secretary of State with the authority to prescribe and adopt rules.

The section affects §406.014 of the Government Code.

§87.60. Prohibition Against Recording Personal Information.

(a) A notary public (other than a court clerk notarizing instruments for the court) that notarizes a document or instrument on behalf of a signer, grantor or maker that is identified to the notary by an identification card issued by a governmental agency or a passport issued by the United States may not record in the notary's book of record:

(1) the identification number that was assigned by the governmental agency or by the United States to the signer, grantor or maker and that is set forth on the identification card or passport; or

(2) any other number that could be used to identify the signer, grantor or maker of the document.

(b) Nothing in this section shall be construed to prohibit a notary from recording a number related to the residence or alleged residence of the signer, grantor or maker of the document or the instrument.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 15, 2007.

TRD-200700500
Lorna Wassdorf
Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: March 25, 2007
For further information, please call: (512) 475-0775

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TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 35. BRUCELLOSIS

SUBCHAPTER D. ERADICATION OF BRUCELLOSIS IN CERVIDAE

4 TAC §35.82

The Texas Animal Health Commission ("TAHC" or "Commission") proposes amendments to Chapter 35, Subchapter D, §35.82 concerning the Eradication of Brucellosis in Cervidae.

TAHC adopted Subchapter D in the August 13, 1999, issue of the *Texas Register* (24 TexReg 6279). Section 35.82 contains requirements for certified brucellosis free cervidae herds and establishes the procedures and standards in order to make this determination.

The regulations describe general requirements for the collection and submission of blood samples to approved laboratories for testing, recognition of official tests, and the interpretation standards for official tests which are necessary to recognize herds which have voluntarily conducted whole herd testing in order to achieve Certified Brucellosis Free Cervidae Herd status. Herds which have achieved this status have distinct advantages in the marketability and interstate movement of animals. Currently the state requirements provide that for recertification of herd status, be 24 months from the anniversary. Based on actions recently taken with recertification for Tuberculosis the recommendation is to make the recertification timeframe be 33 to 39 months and that USDA will proposes this in the Code of Federal Regulation.

Currently there is no current federal cervid brucellosis regulatory program in the 9 Code of Federal Regulations (9 CFR) and therefore no testing federal interval requirement. The current Uniform Methods and Rules (UM&R) serves only as program standards. It is the Commission's understanding that once the cervid brucellosis program rules are in place (in the 9CFR), a new updated UM&R reflecting the program changes will be published. Producers currently enrolled in a cervid brucellosis herd certification program are doing so under the authority of state regulations.

FISCAL NOTE

Mr. Mike Jensen, Assistant Executive Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the amendment is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the amendment. There will be no effect to individuals required to comply with the amendment as proposed. Implementation of this rule poses no significant fiscal impact on small or micro-businesses.

PUBLIC BENEFIT NOTE

Mr. Jensen also has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be that the program will reflect the proposed national standard.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Government Code, §2001.022, this agency has determined that the proposed amendment will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed amendment will not affect private real property. These proposed amendments are an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Dolores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

STATUTORY AUTHORITY

The amendment is proposed under the Texas Agriculture Code, Chapter 161, §161.041(a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Also §161.054 authorizes the commission to regulate, by rule, the movement of animals. This is further supported by §161.081 which authorizes the commission to regulate the entry of such livestock into Texas from another state. Section 163.061 authorizes the commission to adopt rules for Brucellosis control.

No other statutes, articles, or codes are affected by the amendment.

§35.82. Requirements for Certified Brucellosis Free Cervidae Herd.

(a) - (b) (No change.)

(c) Recertification.

(1) For continuous certification, the herd must have a negative test of all animals required to be tested conducted within 90 days before the certification anniversary date. If the certification test is conducted within 90 days after the anniversary date, the certification period will be 33 to 39 [~~24~~] months from the anniversary and not 33 to 39 [~~24~~] months from the recertifying test. During the interval between the anniversary date and the recertifying test, certification will be suspended. If a herd blood test for recertification is not conducted within 90 days after the anniversary date, the certification requirements are the same as for initial certification.

(2) If suspects or reactors are found on recertification testing, certification status will be suspended and a herd investigation will be initiated.

(d) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 12, 2007.

TRD-200700401
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: March 25, 2007
For further information, please call: (512) 719-0700

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CHAPTER 43. TUBERCULOSIS
SUBCHAPTER C. ERADICATION OF TUBERCULOSIS IN CERVIDAE

4 TAC §43.20, §43.22

The Texas Animal Health Commission (Commission) proposes amendments to Chapter 43, Subchapter C, §43.20 and §43.22, concerning the Eradication of Tuberculosis. The Texas Animal Health Commission adopted regulations in 1995 to implement the standards and guidelines specified in the Tuberculosis Eradication in Cervidae, Uniform Methods and Rules.

On January 12, 2006, the United States Department of Agriculture (USDA) published in the *Federal Register* (71 FR 1985-1988, Docket No. 04-094-1) a proposal to amend the regulations regarding tuberculosis in captive cervids by extending, from 2 years to 3, the term for which accredited herd status is valid and increasing by 12 months the interval for conducting the reaccreditation test required to maintain the accredited tuberculosis-free status of cervid herds. USDA is also reducing, from three tests to two, the number of consecutive negative official tuberculosis tests required of all eligible captive cervids in a herd before a herd can be eligible for recognition as an accredited herd. The Commission is also changing the definition of "Accredited Herd" in §43.20 to conform to the change in the requirements. They adopted that change on April 27th, 2006, and it was published in the Federal Register (71 FR 24803-24805, Docket No. 04-094-2) as a final rule. The Commission is changing the state requirements to conform to the federal standards. These actions will reduce testing costs for herd owners, lessening the potential for animal injury or death during testing, and lowering administrative costs for the Commission.

FISCAL NOTE

Mr. Mike Jensen, Assistant Executive Director of Administration, Texas Animal Health Commission, has determined for the first five-year period these amendments are in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the amendments. There will be no effect to individuals required to comply with these amendments as proposed. Implementation of these amendments poses no significant fiscal impact on small or micro-businesses.

PUBLIC BENEFIT NOTE

Mr. Jensen also has determined that for each year of the first five years these amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be that the state requirements will conform to the federal standard.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Government Code, §2001.022, this agency has determined that the proposed amendments will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed amendments will not affect private real property. These proposed amendments are an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed amendments may be submitted to Dolores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

STATUTORY AUTHORITY

The amendments are proposed under the Texas Agriculture Code, Chapter 161, §161.041(a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Also §161.054 authorizes the commission to regulate by rule the movement of animals. This is further supported by §161.081 which authorizes the commission to regulate the entry of such livestock into Texas from another state.

No other statutes, articles or codes are affected by the amendments.

§43.20. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accredited Herd--A herd that has passed at least two [~~three~~] consecutive official tuberculosis tests of all eligible animals conducted at nine to 15 month intervals, has no evidence of bovine tuberculosis, and meets the requirements of the UM&R.

(2) - (26) (No change.)

§43.22. Herd Status Plans for Cervidae.

(a) Accredited Herd Plan.

(1) (No change.)

(2) Qualifying standards. To meet the requirements for accredited herd status, the herd must pass at least two [~~three~~] consecutive official tests for tuberculosis at nine to 15 month intervals with no evidence of bovine tuberculosis disclosed. Herds meeting these standards shall be issued a certificate by the Commission.

(3) (No change.)

(4) Reaccreditation. To qualify for reaccreditation, the herd must pass a test within a period of 33 to 39 [~~21-27~~] months of the anniversary date. The accreditation period will be 36 [~~24~~] months [~~(730 days)~~] from the anniversary date (not 36 [~~24~~] months from the date of the reaccreditation test).

(b) - (e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 12, 2007.

TRD-200700402
Gene Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: March 25, 2007
For further information, please call: (512) 719-0700

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CHAPTER 45. REPORTABLE DISEASES

4 TAC §45.2

The Texas Animal Health Commission (TAHC) proposes amendments to Chapter 45 §45.2, concerning Reportable Diseases. Texas Agriculture Code Chapter 161, Section 161.101 requirements related to duty of a veterinarian, veterinary diagnostic laboratory or a person having care, custody, or control of an animal to report specified animal health diseases. The Commission has promulgated reporting requirements and specifies specific reportable diseases in Chapter 45 of the Commission rules.

Diseases are adopted for reporting in order to be protective of animal health in Texas. The Commission is proposing that two equine disease be added to the reportable list. Texas equine producers, veterinarians and livestock health officials have become increasingly concerned about Equine Viral Arteritis (EVA), which has recently been detected in New Mexico and Utah this year.

EVA is an infectious viral disease of horses that causes a variety of clinical symptoms, most significantly abortions. The disease is transmitted through both the respiratory and reproductive systems. Many horses are either asymptomatic or exhibit flu-like symptoms for a short period of time. An abortion in pregnant mares is often the first, and in some cases, the only sign of the disease. EVA has been confirmed in a variety of horse breeds, with the highest infection rate found in adult Standardbreds.

Breeders, racehorse owners, and show horse owners all have strong economic reasons to prevent and control this disease. While it does not kill mature horses, EVA can eliminate an entire breeding season by causing numerous mares to abort. In addition, U.S. horses that test positive for EVA antibodies and horse semen from EVA-infected horses can be barred from entering foreign countries. While some infected equine exhibit no signs of disease, owners should be alert and notify their accredited private veterinary practitioner if horses or foals develop signs of EVA, including fever, depression, diarrhea, coughing or nasal discharge, or swelling of the legs, body or head. Laboratory testing is necessary to confirm a diagnosis, as other equine diseases can present similar clinical signs.

Equine Herpes Virus-1 (EHV-1) is the second disease that has given Texas equine producers concern. EHV-1 is attributed to outbreaks of neurological disease in different venues across the country and has rightfully captured our attention. The most recent clinical case of neurologic EHV-1 in California involves a horse from Golden Gate Fields. Raceways, horse shows, farms, and clinics in several states have been noticeably impacted by multiple cases of illness including several deaths.

Also House Bill (HB) 9 was passed by the 77th Texas Legislative Session which added requirements related to duty of a veterinary diagnostic laboratory or a person having care, custody, or control of an animal to report specified animal health diseases. This requirement amends the Texas Agriculture Code Chapter 161, Section 161.101. The section, prior to HB 9, required only a veterinarian to report to the commission the existence of any diseases specified by the rule. We are adding that to the rule.

FISCAL NOTE

Mr. Mike Jensen, Assistant Executive Director of Administration, Texas Animal Health Commission, has determined for the first five-year period the amendment is in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the amendment. There will be no effect to individuals required to comply with the amendment as proposed. Implementation of this rule poses no significant fiscal impact on small or micro-businesses.

PUBLIC BENEFIT NOTE

Mr. Jensen also has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be that we will receives reports of when the two equines diseases are diagnosed in the state.

LOCAL EMPLOYMENT IMPACT STATEMENT

In accordance with Government Code, §2001.022, this agency has determined that the proposed amendment will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

TAKINGS ASSESSMENT

The agency has determined that the proposed amendment will not affect private real property. These proposed amendements are an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

REQUEST FOR COMMENT

Comments regarding the proposed amendment may be submitted to Delores Holubec, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758, by fax at (512) 719-0721 or by e-mail at "comments@tahc.state.tx.us."

STATUTORY AUTHORITY

The amendment is adopted under the Texas Agriculture Code, Chapter 161, §161.041(a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Section 161.101 provides that the commission may adopt rules that require a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal to report a disease not covered by Subsection (a) or (b) if the commission determines that action to be necessary for the protection of animal health in this state. The commission shall immediately deliver a copy of a rule adopted under this subsection to the appropriate legislative oversight committees. A rule adopted by the commission under this subsection expires on the first day after the last day of the first regular legislative session that begins after adoption of the rule unless the rule is continued in effect by act of the legislature.

No other statutes, articles, or codes are affected by the amendment.

§45.2. Duty To Report.

(a) A veterinarian, a veterinary diagnostic laboratory or a person having care, custody, or control of an animal, shall report the existence of the following diseases among livestock, exotic livestock, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis. The following listing includes diseases and conditions that are Office International Des Epizooties List A Diseases, Foreign Animal Diseases, National Program Diseases or Texas Animal Health Commission Designated Diseases.
Figure: 4 TAC §45.2(a)

(b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Gene Snelson
General Counsel
Texas Animal Health Commission
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For further information, please call: (512) 719-0700

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TITLE 10. COMMUNITY DEVELOPMENT

PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 301. GENERAL PROVISIONS

10 TAC §301.1

The Texas Residential Construction Commission ("commission") proposes amendments to 10 TAC §301.1, concerning definitions used in construing agency rules promulgated to implement the Texas Residential Construction Commission Act ("Act"), Title 16, Property Code. The amendments are proposed to add a definition for the term "builder in good standing".

Ms. Susan Durso, General Counsel for the commission, has determined that for each year of the first five year period that the amended section is in effect there will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of enforcing or administering the section.

Ms. Durso has also determined that for the first five years the amended section is in effect the public will benefit from clarification in commission definitions. There will not be an effect on individuals, or large, small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Ms. Durso has also determined that for each year of the first five-year period the amended section is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, Section 2001.022.

Comments on the proposed amendment may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711-3144 or by fax to (512) 475-2453. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "301.1 amendment" in the subject line. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed rules in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the section under consideration. Comments not timely received or that are submitted electronically but do not have "301.1 amendment" in the subject line may not be considered.

The amendment is proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code.

§301.1. Definitions.

The following words and terms, when used in rules promulgated by the commission, shall have the following meanings unless the context of the rule clearly indicates otherwise.

(1) - (4) (No change.)

(5) Builder in good standing--a builder or remodeler that has a current active certificate of registration issued by the commission and that has no unpaid fees or administrative penalties due and owing to the commission.

(6) [~~(5)~~] Building and performance standards--those standards that apply to home construction built pursuant to a transaction governed by the Act.

(7) [~~(6)~~] Commission--the Texas Residential Construction Commission.

(8) [~~(7)~~] Construction Activities--actions taken by the builder or at the direction of the builder by an employee, agent, contractor or subcontractor of the builder during the process of building the home or the improvement to the home.

(9) [~~(8)~~] Construction defect--

(A) the failure of the design, construction or repair of a home, an alteration of or a repair, addition or improvement to an existing home, or an appurtenance to a home to meet the applicable warranty and building and performance standards during the applicable warranty period; and

(B) any physical damage to the home, an appurtenance to the home, or real property on which the home or appurtenance is affixed that is proximately caused by that failure.

(10) [~~(9)~~] Cosmetic deficiency--any marred, scuffed, scratched or smudged painted surface or countertop; chipped or stained porcelain, tile, grout, or fiberglass; chipped surfaces of appliances or plumbing fixtures; torn or defective window or door screens; marred, smudged, scratched or stained cabinet surfaces or finishes; or, broken, chipped or scratched glass, window or mirror.

(11) [~~(10)~~] Dwelling unit--a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

(12) [~~(11)~~] Executive Director--the individual employed by the commission as the chief executive for the agency or any person to whom the Executive Director has delegated the authority to act on behalf of the Executive Director.

(13) [~~(12)~~] Home--the real property, improvements and appurtenances thereto for a single-family residential dwelling unit or duplex.

(14) [~~(13)~~] ICC--the International Code Council, Inc., currently located at 5203 Leesburg Pike, Suite 600, Falls Church, Virginia, 22041-3401, or at a subsequent address, and any successor organization that performs substantially the same functions that the ICC performs as of December 1, 2003.

(15) [~~(14)~~] Improvement to the interior of an existing home when the cost of the work exceeds $20,000--any modification to the interior living space of a home, which includes the addition or installation of permanent fixtures inside the home, pursuant to an agreement for work for total consideration in excess of $20,000 to be paid by a homeowner to a single builder.

(16) [~~(15)~~] Living space--the enclosed area in a home that is suitable for year-round residential use.

(17) [~~(16)~~] Local building official--the agency or department of a municipality, county or other local political subdivision with authority to make inspections and to enforce the laws, ordinances, and regulations applicable to the construction, alteration, or repair of homes in that locality.

(18) [~~(17)~~] Material improvement--a modification to an existing home that either increases or decreases the home's total square footage of living space that also modifies the home's foundation, perimeter walls or roof. A material improvement does not include modifications to an existing home if the modifications are designed primarily to repair or replace the home's component parts.

(19) [~~(18)~~] Person--an individual, partnership, company, corporation, association, or any other legal entity, however organized.

(20) [~~(19)~~] Remodeler--any business entity or individual who, for a fixed price, commission, fee, wage, or other compensation, constructs or supervises or manages the construction of a material improvement to an existing home or an improvement to the interior of an existing home when the cost of the work exceeds $20,000.

(21) [~~(20)~~] Single-family residential dwelling--a building that contains one or two dwelling units, including a townhouse, complete with independent living facilities for one or more persons suitable for one household, including permanent provisions for living, sleeping, eating, cooking and sanitation.

(22) [~~(21)~~] State inspector--a person employed by the commission whose duties include serving as a member of an appellate panel to:

(A) review the recommendations of third-party inspectors;

(B) provide consultation to third-party inspectors; and

(C) administer the state-sponsored inspection and dispute resolution process.

(23) [~~(22)~~] Statutory warranty--the legal requirement that the component parts of a home perform to the building and performance standards applicable to the construction for the number of years as set in statute, to wit:

(A) one year for workmanship and materials;

(B) two years for plumbing, electrical, heating, and air conditioning delivery systems;

(C) ten years for major structural components of the home; and

(D) ten years for the warranty of habitability.

(24) [~~(23)~~] Structural failure--for purposes of Property Code §429.001(b) only, the term means non-compliance with the commission-adopted performance standards for major structural components.

(25) [~~(24)~~] Third-party inspector--a person approved by the commission to conduct an objective home inspection and prepare a report of that inspection as part of the state-sponsored inspection and dispute resolution process.

(26) [~~(25)~~] Townhouse--a single-family dwelling unit constructed in a group of three or more attached dwelling units in which each unit extends from foundation to roof and with open space on at least two sides not more than three stories in height with a separate means of ingress and egress.

(27) [~~(26)~~] Transaction governed by the Act--an agreement between a homeowner and a builder:

(A) for the construction of a new home; or

(B) for construction on an existing home that is:

(i) a material improvement to the home other than an improvement solely to replace or repair the roof; or

(ii) an improvement to the interior of the home when the cost paid for the work exceeds $20,000.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 9, 2007.

TRD-200700391
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Earliest possible date of adoption: March 25, 2007
For further information, please call: (512) 463-2886

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CHAPTER 303. REGISTRATION
SUBCHAPTER A. REGISTRATION OF BUILDERS

10 TAC §303.19

The Texas Residential Construction Commission (the "commission") proposes amendments to Chapter 303, Subchapter A, §303.19 relating to the builder/remodeler renewal process as provided for in Title 16, Property Code. The amendments are proposed to streamline and unify builder registration renewals, to reduce staff time spent on data entry, and to reduce errors in data entered as a result of illegible handwriting.

Susan K. Durso, General Counsel, has determined that, for each year of the first five-year period the proposed amendments are in effect, there will be reduced fiscal implications to the state and no fiscal implications for local governments as a result of enforcing or administering the proposed amendments.

Ms. Durso has also determined that, for each year of the first five-year period the proposed amendments are in effect, the public will benefit from reduced costs for processing paper work and uniform procedures for registered builder renewal applications.

Ms. Durso has also determined that, for each year of the first five-year period the proposed amendments are in effect, there will be no significant effect on individuals or large, small, and micro-businesses because of the adoption of the proposed amendments.

Ms. Durso has also determined that, for each year of the first five-year period the proposed amendments are in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

Interested persons may submit written comments (12 copies) on the proposed amendments to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed sections in the *Texas Register*. Comments received after that

date will not be considered. Comments should be organized in a manner consistent with the organization of the proposed amendment. Comments may be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "303.19 amendments" in the subject line. Comments not received timely or that are submitted electronically but do not include "303.19 amendments" in the subject line may not be considered.

The amendments are proposed pursuant to Chapter 416, Property Code, which provides for the registration of builders and remodelers and, generally, pursuant to Property Code, §408.001, which provides authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code.

The statutory provisions affected by these proposed amendments are those set forth in Property Code, Chapters 408 and 416.

No other statutes, articles, or codes are affected by the proposed amendments.

§303.19. Renewal.

(a) [~~After March 1, 2004,~~] An individual or business entity[~~a person~~] operating as a builder or remodeler in this state must keep a current certificate of registration and must timely renew its certificate of registration.

(b) A builder or remodeler that has been issued an even-numbered builder registration certificate must renew its registration by the last day of February of each even-numbered year. A builder or remodeler that has been issued an odd-number certificate of registration must renew its registration by February 28 of each odd-numbered year.

(c) A builder or remodeler that [~~who~~] fails to maintain a current certificate of registration may be subject to a late fee, other [~~and either an~~] administrative penalty, or other disciplinary action, as determined by the commission.

(d) In order to renew a certificate of registration, a builder or remodeler shall submit a completed application for renewal of a certificate of registration and the required fee to the commission. The completed application and fee must be received or, if mailed must be postmarked, no later than the applicable registration renewal date [~~not later than thirty (30) days prior to the end of the applicable registration period~~] as provided in subsection (b) of this section.

(e) All individual and business entities that file renewal applications with the commission and that have registered more than twenty-five homes in the prior calendar year must file their renewal applications via the commission's secure Web portal provided for online builder/remodeler renewal registration. A completed renewal application and renewal fee must be submitted for each named individual or business entity under which the applicant intends to operate as a builder or remodeler in this state.

(f) Builders and remodelers that are required to use the online renewal process under subsection (e) of this section, but that are unable to utilize the online system may submit a sworn affidavit to the Executive Director requesting a waiver from the required use of the online process for renewal registration.

(g) The Executive Director may grant a waiver requested under subsection (f) of this section, if the builder or remodeler submits a sworn affidavit stating that the builder or remodeler:

(1) does not have the use of a credit card or access to online banking for the purpose of making an online payment;

(2) does not have access to the internet; or

(3) other good cause for waiver as determined in the sole discretion of the Executive Director.

(h) A decision by the Executive Director on whether to grant a waiver under subsection (g) of this section is a final agency decision not subject to further administrative appeal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Susan K. Durso
General Counsel
Texas Residential Construction Commission
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SUBCHAPTER B. REGISTRATION OF HOMES

10 TAC §303.140

The Texas Residential Construction Commission (the "commission") proposes amendments to Chapter 303, Subchapter B, §303.140 relating to the home registration process as provided for in Title 16, Property Code. The amendments are proposed to streamline and unify home registration, to reduce staff time spent on data entry, and to reduce errors in data entered as a result of illegible handwriting.

Susan K. Durso, General Counsel, has determined that, for each year of the first five-year period the proposed amendments are in effect, there will be reduced fiscal implications to the state and no fiscal implications for local governments as a result of enforcing or administering the proposed amendments.

Ms. Durso has also determined that, for each year of the first five-year period the proposed amendments are in effect, the public will benefit from reduced costs for processing paper work and uniform procedures for home registration by builders and remodelers.

Ms. Durso has also determined that, for each year of the first five-year period the proposed amendments are in effect, there will be no significant effect on individuals or large, small, and micro-businesses because of the adoption of the proposed amendments.

Ms. Durso has also determined that, for each year of the first five-year period the proposed amendments are in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act, §2001.022.

Interested persons may submit written comments (12 copies) on the proposed amendments to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed sections in the *Texas Register*. Comments received after that date will not be considered. Comments should be organized in a manner consistent with the organization of the proposed amendment. Comments may be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically,

please include "303.140 amendments" in the subject line. Comments not received timely or that are submitted electronically but do not include "303.140 amendments" in the subject line may not be considered.

The amendments are proposed pursuant to Property Code, §426.003, which provides for the registration of homes and, generally, pursuant to Property Code, §408.001, which provides authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code.

The statutory provisions affected by these proposed amendments are those set forth in Property Code, Chapters 408 and 426.

No other statutes, articles, or codes are affected by the proposed amendments.

§303.140. Home Registration Process.

(a) A person registering a home under §303.100 or §303.110 of this subchapter shall submit a completed [~~use the~~] Home Registration Form with the appropriate fee.

(b) All individuals and business entities who are registered with the commission and are required to file twenty-five or more home registration forms each year with the commission must register homes online via the commission's secure Web portal for online home registration, unless the builder or remodeler has received a waiver of this requirement under subsection (d) of this section. [~~A completed home registration form must be submitted to the commission with the appropriate fee by first class mail, personal delivery or via the commission's secure Web portal provided for online home registrations by builders.~~]

(c) Builders and remodelers that are unable to utilize the online home registration process may submit a sworn affidavit to the Executive Director requesting a waiver from the required use of the online process for home registration.

(d) The Executive Director may grant a waiver requested under subsection (c) of this section, if the builder or remodeler submits a sworn affidavit stating that the builder or remodeler:

(1) does not have the use of a credit card or access to online banking for the purpose of making an online payment;

(2) does not have access to the internet; or

(3) other good cause for waiver as determined in the sole discretion of the Executive Director.

(e) A decision by the Executive Director on whether to grant a waiver under subsection (d) of this section is a final agency decision not subject to further administrative appeal.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Susan K. Durso
General Counsel
Texas Residential Construction Commission
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For further information, please call: (512) 463-2886

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SUBCHAPTER C. REGISTRATION OF THIRD-PARTY INSPECTORS

10 TAC §303.207

The Texas Residential Construction Commission proposes amendments to 10 TAC §303.207, Subchapter C, which sets forth the training requirements for third-party inspectors. The amendments clarify that third-party inspector applicants must complete commission training or the commission will administratively withdraw the application. Further, the amendments clarify that third-party inspectors must maintain the eligibility requirements of their registration by completing the continuing education requirements of any license or certificate required for registration, such as continuing education requirements for licensed architects and engineers and the continuing education requirements for certification as a Code Combination Inspector by the International Code Council.

The proposed amendments add a new subsection that clearly states that initial training requirements must be completed or an application will be administratively withdrawn thirty days after notification of eligibility for the initial training and fees paid will be forfeited. Other new subsections state the requirements of maintaining continuing education and the need to show proof at the time of renewal and the consequences of failure to do so.

Susan Durso, General Counsel for the commission, has determined that for each year of the first five year period that the proposed amendment is in effect there will be a decrease in expenditures or revenue for state government, because the amendment eliminates the need to conduct a hearing before the State Office of Administrative Hearings before an applicant can be denied. No fiscal impact for local government as a result of enforcing or administering the section.

Ms. Durso has also determined that for each year of the first five year period the proposed amendments are in effect the public will benefit from a reduction in administrative costs. There will not be an effect on individuals, or large, small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Durso has also determined that for each year of the first five-year period the proposed amendments are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Interested persons may send written comments regarding these proposed amendments to the Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711-3144. Comments regarding these amendments will be accepted for thirty days following the date of publication in the *Texas Register*. Thereafter, the comments will not be considered as timely filed. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "303.207 amendments" in the subject line.

Comments not received timely or that are submitted electronically but do not do not include "303.207 amendment" in the subject line may not be considered.

The amendments are proposed pursuant to Property Code §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code and Property Code §427.001.

§303.207. Inspector Training.

(a) The commission shall provide [~~develop~~] an initial training program for all registered third-party inspectors.

(b) Third-party inspector applicants must complete initial commission training within thirty days of notification of eligibility for training or the commission will administratively withdraw the application without refund of fees paid.

(c) [~~(b)~~] Registered third-party inspectors must complete the commission-developed training prior to participation in the state-sponsored inspection and dispute resolution process.

(d) Registered third-party inspectors must complete continuing education developed by the commission as required periodically to stay abreast of changes in the Act or commission rules affecting the third-party inspector's role in the state-sponsored inspection and dispute resolution process and the commission-adopted warranties and performance standards.

(e) Registered third-party inspectors must complete the continuing education requirements of any license or certification required to maintain their qualifications to serve as a third-party inspector in the state-sponsored inspection and dispute resolution process and must provide evidence of the completion of such continuing education at the time of renewal of their third-party inspector registration.

(f) Failure to timely participate in training, to maintain qualifications or provide proof of completion of the continuing education requirements mandated by this section may result in disciplinary action, including the denial of a renewal application or the revocation of a third-party inspector registration.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Susan K. Durso
General Counsel
Texas Residential Construction Commission
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For further information, please call: (512) 463-2886

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SUBCHAPTER D. THIRD-PARTY WARRANTY COMPANIES

10 TAC §303.268

The Texas Residential Construction Commission proposes new §303.268 of 10 TAC Chapter 303, Subchapter D, to prohibit third-party warranty companies from conducting business with unregistered builders and remodelers or a builder or remodeler that is not in good standing with the commission.

Susan Durso, General Counsel, has determined that for each year of the first five-year period the new section is in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering the proposed amendments.

Ms. Durso has also determined that for each year of the first five-year period the new section is in effect the public will benefit from having an additional safeguard in place to ensure that builders and remodelers are properly registered with the commission.

Ms. Durso has also determined that for each year of the first five-year period the new section is in effect there will be no significant fiscal impact on individuals or large, small and micro-businesses. Third-party warranty companies that have previously contracted with unregistered builders and remodelers or builders and remodelers not in good standing with the commission will be required to check the commission website prior to executing a contract to assure that the builder/remodeler is registered and in good standing.

Ms. Durso has also determined that for each year of the first five-year period the new section is in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under Administrative Procedure Act §2001.022.

Interested persons may submit written comments (12 copies) on the proposed new section to Susan Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed new section in the *Texas Register*. Comments received after that date will not be considered. Comments should be organized in a manner consistent with the organization of the proposed rule. Comments may be submitted electronically to comments@.trcc.state.tx.us. For comments submitted electronically, please include "new rule 303.268" in the subject line. Comments not received timely or that are submitted electronically but do not include "new rule 303.368" in the subject line may not be considered.

The new section is proposed pursuant to Property Code §408.001, which provides rulemaking authority to the commission, and Property Code §430.008 and §430.009, which provide for the registration and obligations of third-party warranty companies.

No other statutes, articles, or codes are affected by the proposal.

§303.268. Conducting Business with Unregistered Builders/Remodelers Prohibited.

A commission-approved third-party warranty company shall not enter into any contract or agreement to provide warranty coverage pursuant to Property Code §430.009 or to act as a guarantor for a builder or a remodeler that is not properly registered or not in good standing with the commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Susan K. Durso
General Counsel
Texas Residential Construction Commission
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CHAPTER 305. PRACTICE AND PROCEDURES FOR HEARINGS AND DISCIPLINARY ACTIONS

SUBCHAPTER B. DISCIPLINARY PROCEEDINGS

10 TAC §305.21

The Texas Residential Construction Commission (commission) proposes amendments to §305.21 of 10 TAC Chapter 305, regarding the procedures for hearings and disciplinary actions. The proposed amendments eliminate the distinction between formal and informal reprimands and provide for revocation or suspension of a certificate of registration upon a finding that a registrant does not meet the statutory eligibility requirements for individuals and business entities. In addition, the amendments state the standard criteria to be used in determining administrative penalties related to commission actions.

Ms. Susan Durso, General Counsel for the commission, has determined that, for each year of the first five-year period that the proposed amended section is in effect, there will be no increase in expenditures or revenue for state government and no fiscal impact for state or local government as a result of enforcing or administering the sections.

Ms. Durso has also determined that, for the first five years the amended section is in effect, the public will benefit from more clear and precise rules that explain how to participate in the disciplinary actions and hearing procedures of the commission. There will not be an effect on individuals or large, small, or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Durso has also determined that, for each year of the first five-year period the proposed amended section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Interested persons may submit written comments (12 copies) on the proposed new section to Susan K. Durso, General Counsel, Texas Residential Construction Commission, P.O. Box 13144, Austin, Texas 78711. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed amendment in the *Texas Register*. Comments received after that date will not be considered. Comments should be organized in a manner consistent with the organization of the proposed rule. Comments may be submitted electronically to comments@.trcc.state.tx.us. For comments submitted electronically, please include "305.21 Amendment" in the subject line. Comments not received timely or that are submitted electronically but do not include "305.21 Amendment" in the subject line may not be considered.

The amendments are proposed pursuant to Property Code, §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code, the commission's enabling act, and the Administrative Procedures Act, Texas Government Code, Chapter. 2001; Property Code, §416.005 and §416.006 regarding eligibility requirements for individuals and business entities.

No other statutes, articles, or codes are affected by the proposed amendments.

§305.21. Commission Actions.

(a) Pursuant to §418.002 and §419.001 of the Act, the commission, upon finding that a person has committed a prohibited act under the Act or violated a commission rule, shall enter an order imposing one or more of the following actions:

(1) administer a [~~formal or informal~~] reprimand;

(2) - (4) (No change.)

(b) - (c) (No change.)

(d) Upon finding that a registrant is no longer eligible for a certificate of registration under §416.005 or §416.006 of the Act, the commission shall enter an order to revoke or suspend a person's certificate of registration.

(e) [~~(d)~~] Pursuant to §416.008 of the Act and 10 TAC Chapter 303, Subchapter A, the commission, upon finding that an applicant for registration as builder is unqualified, shall deny the applicant's original or renewal application.

(f) [~~(e)~~] Pursuant to §430.008 of the Act and 10 TAC Chapter 303, Subchapter D, the commission, upon finding that an applicant for registration as a third-party warranty company is unqualified, shall deny the applicant's original or renewal application.

(g) When determining whether to impose an action on a person other than or in addition to the assessment of an administrative penalty under subsection (a) of this section, the commission shall consider:

(1) the nature and degree of the misconduct;

(2) the deterrent effect on the person's future misconduct and avoidance of repetition;

(3) the deterrent effect on others;

(4) the person's past disciplinary record; and

(5) any other factor that justice may require.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 9, 2007.

TRD-200700394
Susan K. Durso
General Counsel
Texas Residential Construction Commission
Earliest possible date of adoption: March 25, 2007
For further information, please call: (512) 463-2886

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10 TAC §305.28

The Texas Residential Construction Commission (commission) proposes amendments to §305.28 of 10 TAC Chapter 305, regarding referral of matters to the State Office of Administrative Hearings (SOAH). The proposed amendments provide that, if the Executive Director believes that a registrant no longer meets the eligibility requirements or qualifications for registration, the Executive Director shall refer the matter to the SOAH. Other amendments are proposed to this section to improve readability.

Ms. Susan Durso, General Counsel for the commission, has determined that, for each year of the first five-year period that the proposed amended section is in effect, there will be no increase in expenditures or revenue for state government and no fiscal impact for state or local government as a result of enforcing or administering the sections.

Ms. Durso has also determined that, for the first five years the amended section is in effect, the public will benefit from more clear and precise rules that explain that certain matters will be referred to SOAH. There will not be an effect on individuals or large, small, or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Ms. Durso has also determined that, for each year of the first five-year period the proposed amended section is in effect, there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, §2001.022.

Comments on the proposed amendments may be submitted to Susan K. Durso, General Counsel, Texas Residential Construction Commission, 311 E. 14th Street, Austin, Texas 78701 or by fax to (512) 475 2453. Comments may also be submitted electronically to comments@trcc.state.tx.us. For comments submitted electronically, please include "305.28 amendments" in the subject line. The deadline for submission of comments is thirty (30) days from the date of publication of the proposed rules in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the rule under consideration.

Comments not received timely or that are submitted electronically but do not include "305.28 amendments" in the subject line may not be considered.

The amendments are proposed pursuant to Property Code, §408.001, which provides general authority for the commission to adopt rules necessary for the implementation of Title 16 of the Property Code, the commission's enabling act, and the Administrative Procedures Act, Texas Government Code, Chapter. 2001; Property Code, §416.005 and §416.006, regarding eligibility requirements for individuals and business entities; Property Code, §418.001 regarding agency disciplinary actions; and Property Code, §430.008 regarding eligibility for third-party warranty companies.

No other statutes, articles, or codes are affected by the proposed amendments.

§305.28. Referral to the State Office of Administrative Hearings.

(a) If a denied builder or third-party warranty company applicant requests a hearing, [~~or if the Executive Director believes a registered person has committed a violation of Chapter 418 of the Act or a commission rules,~~] the Executive Director shall refer the matter to SOAH as set forth in this chapter.

(b) If the Executive Director believes that a registered person has violated a provision of the Act or a commission rule, the Executive Director shall refer the matter to SOAH as set forth in this chapter.

(c) If the Executive Director believes that a person is no longer eligible or qualified to be registered under Chapter 303 of this title, the Executive Director shall refer the matter to SOAH as set forth in this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 9, 2007.

TRD-200700395

Susan K. Durso
General Counsel
Texas Residential Construction Commission
Earliest possible date of adoption: March 25, 2007
For further information, please call: (512) 463-2886

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 8. PIPELINE SAFETY REGULATIONS

SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §8.201

The Railroad Commission of Texas proposes amendments to §8.201, relating to Pipeline Safety Program Fees. The proposed amendments in §8.201(b) change the calendar year for the reports from 2005 to 2006, and change the deadline by which the annual pipeline safety program fee is to be paid from March 15, 2006, to April 20, 2007.

Mary McDaniel, Director, Safety Division, has determined that for the first five years the amendments will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the proposed amendments.

Ms. McDaniel has determined that for each year of the first five years that the amendments will be in effect, the primary public benefit will be the continuation of the Commission's Pipeline Safety program to ensure public safety with regard to pipeline operations.

Texas Government Code, §2006.002, requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Before adopting a rule that would have an adverse economic effect on small businesses, a state agency must prepare a statement of the effect of the rule on small businesses, which must include an analysis of the cost of compliance with the rule for small businesses and a comparison of that cost with the cost of compliance for the largest businesses affected by the rule, using cost for each employee, cost for each hour of labor, or cost for each $100 of sales.

Ms. McDaniel has determined that there will be no additional cost to individuals, small businesses, or micro-businesses of complying with the proposed amendments, because the Commission is not proposing to change the rate of the pipeline safety fee.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until 5:00 p.m. on Monday, March 19, 2007 (21 days after publication in the *Texas Register).* The Commission finds that a 21-day comment period is reasonable

because the fee rate is not changing; only the due date and reporting year are proposed to be amended. Additionally, the proposal, as well as an online comment form, will be available on the Commission's web site no later than the day after the Commission approves publication of the proposal. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. McDaniel at (512) 463-7166. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments under Texas Utilities Code, §§121.201 - 121.210, which authorize the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq.;* and Texas Utilities Code, §121.211, which authorizes the Railroad Commission to adopt, by rule, an inspection fee to be assessed annually against operators of natural gas distribution pipelines and their pipeline facilities.

Texas Utilities Code, §§121.201 - 121.211; and 49 United States Code Annotated, §§60101, *et seq.,* are affected by the proposed amendments.

Statutory authority: Texas Utilities Code, §§121.201 - 121.211; and 49 United States Code Annotated, §§60101, *et seq.*

Cross-reference to statute: Texas Utilities Code, Chapter 121, and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas, on February 6, 2007.

§8.201. Pipeline Safety Program Fees.

(a) (No change.)

(b) The Commission hereby assesses each operator of a natural gas distribution system an annual pipeline safety program fee of $0.37 for each service (service line) reported to be in service at the end of calendar year 2006 [~~2005~~] by each system operator on the Distribution Annual Report, Form F7100.1-1, to be filed on March 15, 2007 [~~2006~~].

(1) Each operator of a natural gas distribution system shall calculate the total amount of the annual pipeline safety program fee to be paid to the Commission by multiplying the number of services listed in Part B, Section 3, of Department of Transportation (DOT) Distribution Annual Report, Form F7100.1-1, due to be filed on March 15, 2007 [~~2006~~] by $0.37.

(2) Each operator of a natural gas distribution system shall remit to the Commission on April 20, 2007, [~~March 15, 2006,~~] the amount calculated under paragraph (1) of this subsection.

(3) - (6) (No change.)

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 6, 2007.

TRD-200700341

Mary Ross McDonald
Managing Director
Railroad Commission of Texas
Earliest possible date of adoption: March 25, 2007
For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.498

The Public Utility Commission of Texas (commission) proposes new §25.498, relating to Prepaid Electric Service Using Customer-Premise Prepayment Devices. The section relates to minimum requirements for prepaid service using special customer-premise prepayment devices, including required functions for such devices, content of, frequency, and delivery of billing information, deferred payment plans, and interruption of service. The section is a competition rule subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). Project number 33814 is assigned to this proceeding.

The commission recognizes that some of the requirements of the existing customer protection rules are inconsistent with prepaid electric service using customer-premise prepayment devices. In this rule, the commission specifies which existing commission rules do not apply to prepaid electric service using special devices and establishes minimum standards that will apply to such service.

Christine Wright, Retail Market Analyst, Electric Industry Oversight Division, determined that for each year of the first five years that the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Wright determined that for each year of the first five years that the section is in effect, to the extent that customer-premise prepayment devices are deployed, the public benefit anticipated as a result of enforcing the section will be new, additional payment options and beneficial electric services that will be provided through the devices. There will be no adverse economic effect on small business or micro-businesses as a result of enforcing the section. There will be no economic cost to persons who are required to comply with the section, because deployment of the customer-premise prepayment devices is voluntary.

Ms. Wright has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act (APA), Texas Government Code §2001.022.

Comments on the new section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, no later than March 16, 2007. Reply comments may be submitted to the

same address no later than March 26, 2007. Sixteen copies of comments and reply comments on the section are required to be filed pursuant to §22.71(c) of this title. Comments and reply comments should be organized in a manner consistent with the organization of the section. The commission invites specific comments regarding the costs associated with, and the benefits that will be gained by, implementation of the section. The commission will consider the costs and benefits in deciding whether to adopt the new section. All comments should refer to Project Number 33814.

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2006), which directs the commission to adopt and enforce rules required in the exercise of its powers and jurisdiction; PURA §17.004, which directs the commission to establish and enforce customer protection standards, including protection from unfair, misleading, deceptive, or anticompetitive practices; the right to have bills presented in a clear, readable format and easy-to-understand language; and the right of low-income customers to have access to bill payment assistance programs designed to reduce uncollectible amounts; PURA §39.001, which adopts a policy that competition in the sale of electricity is consistent with the public interest and directs the commission to use competitive, rather than regulatory methods, to achieve this policy; and PURA §39.101, which requires customer safeguards, including the right to safe, reliable and reasonably priced electricity; protection against service disconnections in extreme weather emergencies or in cases of medical emergency; bills presented in a clear format and in a language readily understandable by customers; accuracy of meter reading and billing; and other protections necessary to ensure high-quality service to customers.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 17.004, 39.001, and 39.101.

§25.498. Retail Electric Service Using Customer-Premise Prepayment Devices.

(a) Application. This section applies to a retail electric provider (REP) that offers prepaid service using a customer-premise device with prepayment capabilities.

(1) If a REP meets the requirements of subsections (b) through (g) of this section, its prepaid service using customer-premise prepayment devices is exempt from the following requirements:

(A) §25.479(b) of this title (relating to Issuance and Format of Bills);

(B) §25.479(c)(1)(G) and (H) of this title; and

(C) §25.480(b), (h), (i), (j), and (k) of this title (relating to Bill Payment and Adjustments).

(2) If a REP meets the requirements of subsections (b) through (g) of this section, interruption of a customer's electric service is exempt from the requirements of §25.483 of this title (relating to Disconnection of Service).

(b) Minimum requirements for prepaid service using a customer-premise prepayment device.

(1) A REP shall file with the commission a written description of its prepaid services using a customer-premise prepayment device prior to offering such services to customers. The description shall include the technical specifications of its customer-premise prepayment device and a detailed description of how the REP will meet the applicable requirements of this subchapter (Subchapter R, Customer Protection Rules for Retail Electric Service).

(2) A customer-premise prepayment device may either be a meter owned or controlled by a REP or a device that communicates with a transmission distribution utility (TDU) advanced meter that will permit the customer's service to be interrupted if the customer's prepayment is exhausted and interruption of power is not prohibited under this section.

(3) A REP-owned meter with prepayment capabilities (special meter) may be considered a customer-premise prepayment device. However, a REP shall not deploy a special meter that has not been successfully installed in at least 500 residences in North America, Australia, Japan, or Western Europe. No special meter that violates the test calibration limits as set by the American National Standards Institute, Incorporated shall be placed in service or left in service. Whenever a test indicates a special meter violates these limits, the meter shall promptly be replaced or made to comply with these limits.

(4) Prepaid retail electric service shall include a means by which the REP may communicate the information required by this subsection to the customer, such as but not limited to a customer information unit in the customer's premises, email, telephone, or mobile phone communications or other electronic communications as described in the REP's terms of service. If a REP offers multiple means by which it communicates information required by this subsection to the customer, it shall allow the customer to choose the means in which the customer receives communication.

(5) Prepaid retail electric service shall include a means by which the customer may make payments for service at the customer's premises, at a location near the customer's premises, or by using two prepayment devices located at the premises and near the premises.

(6) A customer-premise prepayment device shall:

(A) allow a customer to prepay a REP for electric service;

(B) communicate to the customer in English or Spanish the customer's current balance, time and date, electricity usage since last payment in kilowatt-hours, electricity rate, and estimated time or days of paid electricity remaining;

(C) communicate to the customer the name of the REP and the REP's toll-free customer service telephone number;

(D) communicate to the customer a warning at least three days and not more than seven days before a customer's prepaid balance is estimated to drop to zero;

(E) provide a means to store electricity usage information for at least 60 days and a means for the customer to access this information;

(F) when a customer makes a payment, provide a written receipt or confirmation of payment that includes the customer's account number, payment amount, and itemization of any charges in addition to the prepayment or provide a confirmation code that will permit the customer to access such information; and

(G) be removed easily or switched into bypass mode for customers who choose a different REP or an electric service that does not require prepayment .

(7) The communication provided under paragraph (6)(B) of this subsection shall either be available to the customer whenever the customer initiates a request for the information or shall be provided at least daily.

(8) A REP shall test a customer-premise prepayment device that meters consumption for accuracy free of charge one time every four years upon a request of a customer. The REP shall maintain

records of testing for at least four years. Prepayment mechanisms shall accurately account for customer payments.

(c) Disclosures. In addition to the other disclosures required by this title, the terms of service and Your Rights as a Customer for prepaid service under this section shall include a prominent disclosure that if the customer's prepayment balance is exhausted, the customer's service may be interrupted.

(d) Notice of customer names. If a REP uses a customer-premise prepayment device consistent with this section, it shall provide the Electric Reliability Council of Texas (ERCOT) and the transmission and TDU the name, service and mailing addresses, and electric service identifier (ESI) of each customer with such a device. The REP shall treat each person taking prepaid service with such a device as a customer for purposes of this subchapter, including §25.471 of this title (relating to General Provisions of Customer Protection Rules). A REP offering such a service to multiple tenants at a single location may also designate a property owner or property manager as the customer of record for the purpose of transactions with ERCOT and the TDU, but it shall provide ERCOT the name of each tenant that is taking such service.

(e) Summary of electric charges.

(1) REPs providing electric prepayment service using a customer-premise prepayment device are not required to issue traditional bills or invoices to their customers. A REP using a customer-premise prepayment device shall issue a summary of electric charges to each prepaid electric service customer upon request. A summary of electric charges shall be in writing and delivered by the REP's employee or agent; by electronic means if the customer agrees in writing; or by the United States Postal Service.

(2) A summary of electric charges shall include the information specified in §25.479(c) of this title, except that the information specified in §25.479(c)(1)(G) and (H) is not required. The summary of electric charges shall also include dates and amounts of payments made during the period covered by the summary.

(3) A REP shall keep records necessary to produce a summary of electric charges for two years.

(4) Within one business day of receiving a request, a REP shall provide a summary of electric charges showing a customer's electric payments and usage for one year to an energy assistance provider that shows proof of authorization to obtain the information.

(f) Deferred payment plans. A deferred payment plan for a customer taking prepaid service using a customer-premise prepayment device is an agreement between the REP and a customer that allows a customer to pay outstanding charges in installments. A deferred payment plan may be established in person or by telephone, but shall be confirmed in writing by the REP.

(1) A REP shall offer a deferred payment plan to customers, upon request, whose prepaid account balance is exhausted during an extreme weather emergency, pursuant to subsection (g)(5) of this section.

(2) A REP shall offer a deferred payment plan to a customer who has been underbilled, as described in §25.480(e) of this title.

(3) For customers who have expressed an inability to pay, a REP may offer a deferred payment plan.

(4) A REP shall not refuse a customer's participation in any deferred payment plan on any basis set forth in §25.471(c) of this title.

(5) A deferred payment plan offered by a REP shall provide that it shall be paid in installments that a customer may make over at least three months. A REP may require an initial payment not to exceed 25% of any outstanding balance.

(6) A copy of the deferred payment plan shall be provided to the customer and:

(A) shall include a statement, in clear and conspicuous type, that states, "If you are not satisfied with this agreement, or if the agreement was made by telephone and you believe this does not reflect your understanding of that agreement, contact (insert name of REP)." In addition, where the customer and the REP's representative or agent meets in person, the representative shall read the preceding statement to the customer;

(B) may include a penalty not to exceed 5.0% for late payment, but shall not include a finance charge;

(C) shall state the length of time covered by the plan;

(D) shall state the total amount to be paid under the plan;

(E) shall allow the REP to interrupt a customer's power supply if the customer does not fulfill the terms of the deferred payment plan, and shall state the terms under which a customer's power supply may be interrupted; and

(F) shall allow either the customer or the REP to initiate a renegotiation of the deferred payment plan if the customer's economic or financial circumstances change substantially during the time of the deferred payment plan.

(g) Interruption of electric service.

(1) A REP shall not allow a customer's electric service to be interrupted on a holiday or weekend, or the day immediately preceding a holiday or weekend, because the customer's prepaid balance has been exhausted, unless the REP is readily able on those days to accept payment and promptly resume electric service.

(2) A REP shall not allow a customer's electric service to be interrupted because the customer's prepaid balance has been exhausted between 9 p.m. and 7 a.m. or during any period in which the prepayment mechanisms are not available or the REP's customer service center is not operating.

(3) A REP shall not allow a customer's electric service to be interrupted because the customer's prepaid balance has been exhausted when the customer establishes that interruption of service will cause some person residing at that residence to become seriously ill or more seriously ill, and the requirements of subparagraph (A) of this paragraph have been met.

(A) Each time a customer seeks to avoid interruption of service under this paragraph, the customer shall accomplish all of the following before the customer's service is interrupted:

(i) have the person's attending physician (for purposes of this subsection, the "physician" shall mean any public health official, including medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) submit a written statement to the REP stating that interruption of service will cause some person residing at that residence to become seriously ill or more seriously ill; and

(ii) enter into a deferred payment plan.

(B) The prohibition against service interruption provided by this paragraph shall last the lesser of 63 days from the date

the REP receives a written statement from the attending physician, or a period agreed upon by the REP and the customer or physician.

(4) A REP shall not allow a customer's electric supply service to be interrupted because the customer's prepaid balance has been exhausted if the REP receives a pledge, letter of intent, purchase order, or other notification from an electric assistance provider that it is forwarding sufficient payment to continue service; and the customer either pays or makes payment arrangements to pay any amount due that is not covered by the energy assistance provider.

(A) If an energy assistance provider has requested monthly usage data pursuant to §25.472(b)(4) of this title (relating to Privacy of Customer Information), the REP shall not allow a customer's electric service to be interrupted because the customer's prepaid balance has been exhausted until five business days after it has provided the usage data.

(B) A REP may interrupt a customer's electric service if payment from the energy assistance provider's commitment is not timely received, or if the customer fails to pay any portion of the amount not covered by the commitment.

(5) A REP shall not allow a customer's electric supply service to be interrupted because the prepaid balance has been exhausted during an extreme weather emergency in the county in which the service is provided.

(A) The term "extreme weather emergency" shall mean a day when:

(i) the previous day's highest temperature did not exceed 32 degrees Fahrenheit, and the temperature is predicted to remain at or below that level for the next 24 hours anywhere in the county, according to the nearest National Weather Service (NWS) reports; or

(ii) the NWS issues a heat advisory for the county, or when such advisory has been issued on any one of the preceding two calendar days in the county.

(B) During an extreme weather emergency, a REP shall offer a residential customer a deferred payment plan upon request by the customer that complies with the requirements of subsection (f) of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 9, 2007.

TRD-200700384
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 25, 2007
For further information, please call: (512) 936-7223

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER D. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC COLLEGES

19 TAC §4.85

The Texas Higher Education Coordinating Board proposes an amendment to §4.85, concerning Dual Credit Requirements. Specifically, this amendment will provide more high school students with access to college-level courses.

Dr. Glenda O. Barron, Associate Commissioner of Participation and Success, has determined that for each year of the first five years the amendment is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the amendment.

Dr. Barron has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of administering the amendment will be providing more high school students with access to college-level courses. There is no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Glenda O. Barron, Associate Commissioner of Participation and Success, P.O. Box 12788, Austin, Texas 78711 or via email at Glenda.Barron@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §§29.182, 29.184, 61.027, 61.076(J), 130.001(b)(3) - (4), 130.008, 130.090, and 135.06(d), which provides the Coordinating Board with the authority to regulate dual credit partnerships between public two-year associate degree-granting institution and public universities with secondary schools.

The amendment affects §§29.182, 29.184, 61.027, 61.076(J), 130.001(b)(3) - (4), 130.008, 130.090, and 135.06(d).

§4.85. Dual Credit Requirements

(a) (No change.)

(b) Student Eligibility.

(1) (No change.)

(2) An eleventh grade high school student is also eligible to enroll in dual credit courses under either of the following conditions;

(A) [~~if the~~] a student achieves a score of 2200 on Mathematics and/or a score of 2200 on English Language Arts with a writing subsection score of at least 3 on the tenth grade TAKS relevant to the courses to be attempted. An eligible high school student who has enrolled in dual credit courses in the eleventh grade under this provision shall not be required to demonstrate further evidence of eligibility to enroll in dual credit courses in the twelfth grade[~~.~~]; and

(B) the student achieves a combined score of 107 on the PSAT/NMSQT with a minimum of 50 on the critical reading and/or mathematics test relevant to the courses to be attempted. An eligible high school student who has enrolled in dual credit under this provision

must demonstrate eligibility to enroll in dual credit courses in twelfth grade.

(3) - (9) (No change.)

(c) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 12, 2007.

TRD-200700417
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 19, 2007
For further information, please call: (512) 427-6114

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SUBCHAPTER E. APPROVAL OF DISTANCE EDUCATION, OFF-CAMPUS, AND EXTENSION COURSES AND PROGRAMS FOR PUBLIC INSTITUTIONS

19 TAC §4.107

The Texas Higher Education Coordinating Board proposes amendments to §4.107(c)(6) concerning Coordinating Board approval of Study-in-America and Study-Abroad courses. Specifically, this amendment will eliminate the need for institutions of higher education to seek approval for courses offered out-of-state and out-of-country to regularly enrolled students in order to submit the semester credit hours generated by these enrollments for formula funding. Institutions of higher education consistently offer high-quality courses in other states and countries to enhance student learning. The current approval process has no appreciable oversight function and will enable Coordinating Board staff to focus on more important agency priorities.

Dr. Joseph H. Stafford, Assistant Commissioner for Academic Affairs and Research, has determined that, for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of this rule change.

Dr. Stafford has also determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the reassignment of agency staff time to more important work for the state of Texas. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Joseph H. Stafford, Assistant Commissioner for Academic Affairs and Research, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or joe.stafford@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §61.051(j), which provides the Coordinating Board with the authority to approve courses for credit, distance education, and extension programs.

The amendment affects the Texas Education Code, §61.051(j).

§4.107. Standards and Criteria for Distance Education, Off-Campus Instruction, and On-Campus Extension Courses and Programs.

(a) - (b) (No change.)

(c) The following provisions apply to all courses covered under this subchapter, unless otherwise specified:

(1) - (5) (No change.)

~~[(6) Study-in-America and Study-Abroad courses offered by institutions of higher education, or by an approved consortium composed of Texas public institutions, shall be approved by the Commissioner in order for the semester credit hours or contact hours generated in those courses to receive formula funding. The Commissioner shall develop procedures and standards for Study-in-America and Study-Abroad offerings.]~~

(6) [~~(7)~~] All courses covered under this subchapter shall meet the quality standards applicable to on-campus courses. They shall also adhere to the following guidelines and standards:

(A) Courses which offer either academic credit or Continuing Education Units shall do so in accordance with the standards of the Commission on Colleges of the Southern Association of Colleges and Schools.

(B) Except for students in out-of-country courses, students shall satisfy the same requirements for enrollment in an academic credit course as required of on-campus students. Out-of-country students shall be assessed for academic guidance purposes.

(C) Faculty shall be selected and evaluated by equivalent standards, review, and approval procedures used by the institution to select and evaluate faculty responsible for on-campus courses.

(D) Institutions shall provide training and support to enhance the added skills required of faculty teaching courses through electronic means.

(E) The instructor of record shall bear responsibility for the delivery of instruction and for evaluation of student progress.

(F) Faculty for graduate-level courses shall be approved in the same manner as graduate faculty for on-campus courses.

(G) All courses shall be appropriately integrated with the entity or entities administering the corresponding on-campus courses. The supervision, monitoring, and evaluation processes for instructors shall be equivalent to those for on-campus courses.

(H) Students shall be provided academic support services appropriate for distance education and off-campus learners, such as academic advising, career counseling, library and other learning resources, and financial aid.

(I) Facilities (other than homes as distance education reception sites) shall be comparable in quality to those for on-campus courses.

(J) Institutions shall adhere to additional criteria outlined in the Guidelines for Institutional Reports for Distance Education and Off-Campus Instruction.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 12, 2007.

TRD-200700410
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 19, 2007
For further information, please call: (512) 427-6114

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CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES AND/OR HEALTH-RELATED INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER B. ROLE AND MISSION, TABLES OF PROGRAMS, COURSE INVENTORIES

19 TAC §5.24

The Texas Higher Education Coordinating Board proposes amendments to §5.24(b) concerning preliminary authority for doctoral programs. Specifically, the Graduate Education Advisory Committee proposes two changes. The first change would replace the word "mission" in criterion (b)(3) with the word "discipline." This amendment reflects better the purpose of the criterion. For certain disciplines, the primary educational level is graduate; and institutions may not have undergraduate programs in the area. The second change is the addition of another criterion. This criterion would require institutions to provide a plan for external program accreditation, licensing, or other professional recognition, if applicable to the profession.

Dr. Joseph H. Stafford, Assistant Commissioner for Academic Affairs and Research, has determined that, for each year of the first five years the section is in effect, there will not be any fiscal implications to state or local government as a result of this rule change.

Dr. Stafford has also determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section would be in ensuring the need and quality of new doctoral program offerings. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Joseph H. Stafford, Assistant Commissioner for Academic Affairs and Research, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, TX 78711 or joe.stafford@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §61.051(e), which provides the Coordinating Board with the authority to review and approve institutions' table of programs.

The amendment affects the Texas Education Code, §61.051(e).

§5.24. Criteria and Approval of Mission Statements and Tables of Programs.

(a) (No change.)

(b) In reviewing a request for preliminary authority to add a doctoral program to the institution's Table of Programs, the Board shall consider the criteria set out in subsection (a) of this section and the following additional criteria:

(1) - (2) (No change.)

(3) if appropriate to the discipline [~~its mission~~], the institution has self-sustaining baccalaureate- and master's-level programs in the field and/or programs in related and supporting areas;

(4) - (8) (No change.)

(9) where appropriate, a demonstration of plans for external accreditation, licensing, or other applicable professional recognition of the program.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 19, 2007
For further information, please call: (512) 427-6114

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CHAPTER 17. CAMPUS PLANNING

SUBCHAPTER K. REPORTS

19 TAC §17.101

The Texas Higher Education Coordinating Board proposes amendments to §17.101, concerning Campus Planning. Specifically, the amendments to §17.101(2)(B) will provide consistency in reporting dates for institutional master plan reports and would raise the threshold to capture major capital expenditures for institutions.

Ms. Susan Brown, Assistant Commissioner for Planning and Accountability has determined that for each year of the first five years the amendment is in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the amendment.

Ms. Brown, Assistant Commissioner for Planning and Accountability has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of administering the amendment will be the a reduction in administrative burden to the institutions. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Jeff Treichel, Director Finance and Resource Planning, P.O. Box 12788, Austin, Texas 78711; jeff.treichel@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §61.027 and §61.0582.

The amendment affects the Texas Education Code §61.0582.

§17.101. Institutional Reports.

Institutions of higher education shall submit current data to the Board for the following reports:

(1) (No change.)

(2) Facilities Development Reports. The Board shall consider projects that are included in the facilities development plans (MP1 and MP2). A project that is not included in the plan may be considered if the Board determines that the institution, even with careful planning, could not reasonably have foreseen the project need.

(A) (No change.)

(B) Campus Deferred Maintenance Plan (MP2). On or before July 1 [~~October 15~~] of every year, an institution shall submit an update to its Campus Deferred Maintenance Plan (MP2) on file with the Board. This report does not include capital renewal projects. The report shall include:

(i) - (ii) (No change.)

(iii) the amount of an institution's facilities critical backlogged or deferred maintenance needs for the next five years that cost $25,000 [~~$10,000~~] or greater;

(iv) - (v) (No change.)

(C) (No change.)

(3) - (5) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 19, 2007
For further information, please call: (512) 427-6114

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER J. THE PHYSICIAN EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §21.255

The Texas Higher Education Coordinating Board proposes an amendment to §21.255, concerning the Physician Education Loan Repayment Program.

Specifically, the proposed amendment would add to the list of specified state agencies the Texas Department of Aging and Disability Services (DADS), which was inadvertently omitted from this rule when the names of two former state agencies were updated in program rules in July 2006. The acronym for the Texas Department of State Health Services (DSHS) would also be added. The section referring to the eligibility of physicians serving in specified state agencies was updated to reflect agency name changes resulting from the reorganization of the former Texas Department of Health and Texas Department of Mental Health and Mental Retardation. The functions of these two agencies were assigned to the new Texas Department of State Health Services and the Texas Department of Aging and Disability Services (DADS). However, when the update was made, the Texas Department of Aging and Disability Services was inadvertently excluded from the section of the rule that limits the participation of state agency physicians. The proposed amendment would correct this omission.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Hollis has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of this change will be that the rule will clearly provide information regarding limitations on physicians receiving assistance for the first time through the program. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under the Texas Education Code, §§61.531 - 61.540, which provides the Coordinating Board with the authority to establish procedures to administer this program and Texas Education Code, §61.027, which provides the Coordinating Board with the authority to adopt rules to effectuate the provisions of Texas Education Code, Chapter 61.

The amendment affects Texas Education Code, §§61.531 - 61.540.

§21.255. Special Limitations.

(a) An eligible physician is one who:

(1) is not currently fulfilling an obligation to provide physician services in the eligible area or facility; and

(2) has not received start-up assistance from a sponsoring community under the Medically Underserved Community-State Matching Incentive Program under Government Code, Chapter 487, Subchapter F.

(b) Not more than 20 percent of the number of physicians receiving assistance through the Program each fiscal year shall be first-time applicants who are employed by the Texas Department of State Health Services (DSHS), the Texas Department of Aging and Disability Services (DADS), the Texas Department of Criminal Justice, or the Texas Youth Commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 12, 2007.

TRD-200700411

Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 19, 2007
For further information, please call: (512) 427-6114

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SUBCHAPTER K. THE GOOD NEIGHBOR SCHOLARSHIP PROGRAM

19 TAC §21.285

The Texas Higher Education Coordinating Board proposes an amendment to §21.285, concerning the Good Neighbor Scholarship Program.

Specifically, the amendment to §21.285 would clarify that in the process of selecting scholarship recipients no special consideration will be given to applicants who are relatives of Board employees. There has been no evidence of this happening in the past, but a recent audit suggested such safeguards should be added to program rules.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Hollis has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of administering the section will be the increased assurance that all scholarship applicants will be treated uniformly. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under the Texas Education Code, §54.207, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of Texas Education Code, §54.207.

The amendment affects Texas Education Code, §54.207.

§21.285. Selection Procedures.

(a) Each year eligible institutions may submit scholarship recommendations (applications) to the Board. Applications for the 12-month awards must be submitted to the Board no later than March 15.

(1) Prioritization. Participating institutions will assign priority numbers to their applicants, so that if all applicants cannot receive scholarships the Board will know which applicants are given highest priority by the nominating institutions. Within the confines of the basic allotment formula the Board will do its best to accommodate institutional priorities.

(2) Basic allotment. From the pool of valid applications submitted, the Board shall select:

(A) up to 10 students per eligible country, plus

(B) 35 students from a Latin American country designated by the United States Department of State.

(3) Reallocation of unused scholarships. In the event any nation fails to have 10 students available and qualified for scholarships or if the designated country fails to have 35 such students, the Board may allocate such unused scholarships as determined appropriate, with priority being given to students from Mexico, except that the total of all scholarships shall not exceed 235 in a year. If an institution notifies the Board by October 15 of a selected student's failure to use the offered scholarship, the Board will offer the scholarships to the first statewide alternate for that country. Awards canceled after October 15 will be allowed to lapse.

(b) Under no circumstances shall any special consideration be given to applicants who are related to employees of the Board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 12, 2007.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 19, 2007
For further information, please call: (512) 427-6114

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS
SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZAITON GRANT PROGRAM

19 TAC §22.33

The Texas Higher Education Coordinating Board proposes new §22.33 concerning Provisions for the Tuition Equalization Grant Program. Specifically, the new section indicates that the Board will include in its annual financial aid report to the Legislature a report on the Tuition Equalization Grant Program (TEG) that gives a breakdown of TEG recipients by ethnicity, indicating the percentage of each ethnic group that received TEG funds for the academic year at each institution. This reporting requirement is included in §61.230 of the Texas Education Code and has been met in the past through the statistical supplement to the Board's annual report. The financial aid report is a more appropriate place in which to house this information for sharing with the Legislature.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the new section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering these changes in the rules.

Ms. Hollis has also determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of administering the section will be the increased access to the information by the Legislature. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hol-

lis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new section is adopted under the Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt rules necessary to implement the Tuition Equalization Grant Program.

The new section affects Texas Education Code, §§61.221 - 61.230.

§22.33. Reporting.

Each year, the Board shall include as a part of the annual financial aid report mandated in Senate Bill No. 1, Regular Session, General Appropriations Act (§ 13, page III-50), 79th Texas Legislature, a breakdown of Tuition Equalization Grant recipients by ethnicity, indicating the percentage of each ethnic group that received Tuition Equalization Grant funds for the academic year at each institution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 19, 2007
For further information, please call: (512) 427-6114

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SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §22.234

The Texas Higher Education Coordinating Board proposes an amendment to §22.234, concerning the Toward EXcellence, Access and Success (TEXAS) Grant Program.

Specifically, the amendment clarifies how institutions are to determine award amounts when students enrolled for fewer than nine hours are awarded TEXAS grants. In particular, they are to take the maximum award for the relevant term, divide it by 12 to derive a per-hour award amount, and multiply the results by the number of hours for which the student is actually enrolled. The inclusion of this formula in rule will help ensure that institutions handle in a consistent manner awards for students in this situation.

Ms. Lois Hollis, Assistant Commissioner for Student Services, has determined that for each year of the first five years the amendment is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Ms. Hollis has also determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of administering the section will be an increased consistency in the way awards are calculated among institutions for students enrolled for fewer than nine hours. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Lois Hollis, P.O. Box 12788, Austin, Texas 78711, (512) 427-6465, Lois.Hollis@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under the Texas Education Code, §56.303, which provides the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §§56.301 - 56.311.

The amendment affects Texas Education Code, §§56.301 - 56.311.

§22.234. Award Amounts and Adjustments.

(a) Funding. Funds awarded through this program may not exceed the amount of appropriations, gifts, grants and other funds that are available for this use.

(b) Award Amounts.

(1) - (6) (No change.)

(7) An award to an otherwise eligible student enrolled for less than a three quarter-time load is to be prorated. The amount he/she can be awarded is equal to the semester's maximum award for the relevant type of institution, divided by twelve hours and multiplied by the actual number of hours for which the student enrolled.

(c) - (d) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 12, 2007.

TRD-200700413
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 19, 2007
For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS
SUBCHAPTER GG. COMMISSIONER'S RULES CONCERNING EARLY COLLEGE EDUCATION PROGRAM

19 TAC §102.1091

The Texas Education Agency (TEA) proposes new §102.1091, concerning the early college high school program. The proposed new section would establish the procedures through which a campus may attain designation as an Early College High School.

The Texas Education Code (TEC), §29.908, added by the 78th Texas Legislature, 2003, authorized the commissioner of education to establish and administer a middle college education pilot program for students who are at risk of dropping out of school or who wish to accelerate high school completion. The pilot program was to provide for a course of study that enabled a partici-

pating student to combine high school courses and college-level courses during Grades 11 and 12. Through the pilot program, a participating student could complete high school and receive a high school diploma and an associate degree.

Senate Bill (SB) 1146, 79th Texas Legislature, Regular Session, 2005, amended the TEC, §29.908, establishing the early college education program for students who are at risk of dropping out of school or who wish to accelerate completion of the high school program. Rider 59 of SB 1, also passed by the 79th Texas Legislature, Regular Session, 2005, authorizes the use of funds for programs that show the most potential to improve high school. The early college education program is to provide for a course of study that enables a participating student to combine high school courses and college-level courses during Grades 9 - 12. On or before the fifth anniversary of a student's first day of high school, a participating student must be able to receive both a high school diploma and either an associate degree or at least 60 credit hours toward a baccalaureate degree. TEC, §29.908, authorizes the commissioner to adopt rules as necessary to establish the early college education program.

In accordance with the TEC, §29.908, the proposed new §102.1091, Early College High Schools, would establish the requirements necessary for a school to be designated as an early college high school. The rule would include definitions and provisions relating to: application for and notification of designation as an early college high school, conditions of program operation, programs available to early college high school designees, evaluation of programs, and renewal or revocation of authority.

Lizzette Gonzalez Reynolds, senior advisor for education initiatives, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new section. The proposed rule creates a process that will allow campuses to apply for and be designated as Early College High Schools. Designation as an Early College High School does not have a significant financial impact. The TEC, §29.908(c), specifies that a student participating in the program is entitled to the benefits of the Foundation School Program in proportion to the amount of time spent by the student on high school courses while completing the course of study established by the applicable articulation agreement.

Ms. Reynolds has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be providing specially designed programs for students at risk of dropping out of school, as well as students who wish to complete high school at an accelerated pace, to receive high school graduation credit along with an associate degree or 60 hours of college credit toward a baccalaureate degree. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

The public comment period on the proposal begins February 23, 2007, and ends March 25, 2007. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463- 0028. All requests for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §29.908, which authorizes the commissioner of education to adopt rules as necessary to administer the Early College Education Program.

The new section implements the Texas Education Code, §29.908.

§102.1091. Early College High Schools.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--Texas Education Agency.

(2) Commissioner--Commissioner of education.

(3) Early College High School (ECHS)--A school established under the Texas Education Code (TEC), §29.908, that enables a student in Grade 9, 10, 11, or 12 who is at risk of dropping out, as defined by the TEC, §29.081, or who wishes to accelerate completion of high school to combine high school courses and college-level courses. An ECHS program must provide for a course of study that, on or before the fifth anniversary of a student's first day of high school, enables a participating student to receive both a high school diploma and either an associate degree or at least 60 credit hours toward a baccalaureate degree.

(4) Optional Flexible School Day Program (OFSDP)--A program approved by the commissioner of education to provide flexible hours and days of attendance for eligible students in Grades 9 - 12, as defined in §129.1027 of this title (relating to Optional Flexible School Day Program).

(5) School district--For the purposes of this section, the definition of school district includes an open-enrollment charter school.

(b) Application for approval of an ECHS.

(1) Applicant eligibility. Any school district may submit a separate application on behalf of each campus it requests to designate as an ECHS.

(2) Application process. A school district must submit each application in accordance with the procedures determined by the commissioner.

(c) Notification. The Agency will notify each applicant of its selection or non-selection for designation.

(d) Conditions of ECHS program operation.

(1) A school district operating an ECHS program must comply with all assurances in the program application.

(2) ECHS approval is valid for a maximum of one year.

(3) A student enrolled in an ECHS course for high school graduation credit may not be charged for tuition, fees, or required textbooks.

(e) Programs available to an approved ECHS.

(1) Approval as an ECHS will allow a campus to access programs available to the early college education program.

(2) An approved ECHS campus may access the OFSDP defined in §129.1027 of this title. An approved ECHS campus is eligible for OFSDP, but must apply separately in accordance with the TEC, §29.0822, and procedures established by the commissioner.

(f) Evaluation of an ECHS program.

(1) The commissioner will establish specific evaluation procedures prior to the beginning of each school year.

(2) Beginning in 2008 - 2009, the commissioner shall adopt measures, performance standards, and an appeals process. Failure to meet the standards may result in sanctions under the TEC, Chapter 39, including closure of the program.

(3) Beginning in 2009 - 2010, each approved ECHS will be required to submit information and required data to the Agency each year in a manner and with a deadline specified by the commissioner. This information must comply with the measures and performance standards set forth by the commissioner.

(g) Renewal or revocation of authority.

(1) In order to renew ECHS approval, a school district must submit a separate renewal application on behalf of each of its approved campuses each year.

(2) The commissioner may deny renewal or revoke the authorization of an ECHS program based on the following factors:

(A) noncompliance with application assurances and/or the provisions of this section;

(B) lack of program success as evidenced by progress reports and program data;

(C) failure to meet performance standards specified in the application; or

(D) failure to provide accurate, timely, and complete information as required by the Agency to evaluate the effectiveness of the ECHS program.

(3) A decision by the commissioner to deny renewal as or revoke authorization of an ECHS is final and may not be appealed.

(4) The commissioner may impose sanctions on a school district as authorized by the TEC, Chapter 39, Subchapter G, for failure to comply with the requirements of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 12, 2007.

TRD-200700406
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: March 25, 2007
For further information, please call: (512) 475-1497

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CHAPTER 129. STUDENT ATTENDANCE
SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1027

The Texas Education Agency (TEA) proposes new §129.1027, concerning the optional flexible school day program. The proposed new section would establish provisions for administering the program, including application requirements, in accordance with the Texas Education Code (TEC), §29.0822, Optional Flexible School Day Program, as added by House Bill 1, 79th Texas Legislature, Third Called Session, 2006.

The TEC, §29.0822, grants the commissioner rulemaking authority for administering the optional flexible school day program (OFSDP), including establishing application requirements. Students in Grades 9 - 12 who are either at risk of dropping out of school or who are attending either an early college high school program or campus implementing innovative redesign can be served by districts providing flexible attendance schedules. Students participating in the program can vary the hours and days of attendance.

The proposed new §129.1027, Optional Flexible School Day Program, would address how districts can apply to serve students with flexible schedules while maintaining eligibility for state funding using an alternative method for calculating student attendance. Specifically, the proposed new rule would provide definitions for words and terms used in the new rule; describe student eligibility requirements; establish application procedures, including deadlines for participation in 2006-2007 and subsequent school years; and specify conditions of program operation. The proposed new rule would also specify requirements relating to attendance, funding, and extracurricular participation. Provisions relating to school district annual performance review, TEA evaluation of OFSDPs, and revocation of or denial to renew authorization would also be proposed in new §129.1027.

The proposed new rule would require districts to apply to the TEA and receive approval prior to operating an OFSDP. Participating districts would also be required to submit attendance information for students participating in the program. Most automated student attendance accounting systems currently cannot accommodate alternative student attendance accounting methods allowing for attendance by minutes or hours instead of by days. Initially, attendance may have to be kept manually by districts participating in this program until vendors can be contacted and provided with functional requirements for alternative methods of student attendance accounting.

New information for recording attendance would be included in the *Student Attendance Accounting Handbook* published annually and adopted by reference as part of the *Texas Administrative Code*.

Adam Jones, associate commissioner for finance and operations, has determined that for the first five- year period the new section is in effect there will be fiscal implications for state and local government as a result of enforcing or administering the new section. The OFSDP is optional for local school districts.

The fiscal impact to the state would be a minimal annual cost for staff to review, evaluate, and approve applications and additional costs to the Foundation School Program (FSP) for increased student attendance. The annual cost to the FSP cannot be determined at this time because it is not possible to estimate the number of districts that will participate and the number of students to be served. The costs to the FSP are likely to increase over the five-year period as more districts and students participate. Adoption of the program may be enhanced if local automated student attendance accounting systems allow for automated methods to record participation in this and other alternative attendance accounting programs measuring minutes or hours of attendance instead of measuring attendance by days. Participation may also be affected by available staffing in local school districts to provide services.

The fiscal impact (possible cost expenditures or savings) to local districts cannot be determined at this time because it is not possible to estimate the number of districts that will participate and the number of students to be served. Local school districts must apply to participate in the optional program. Some school districts already provide special programs for dropout recovery purposes and receive no state funds for these programs. The OFSDP could provide additional state funding to recover some of the costs for these programs.

Costs will be incurred to report student participation in order to receive funding. These costs are difficult to estimate at this time because some districts will have to use manual methods of student attendance accounting and others will be able to use automated methods of student attendance accounting.

Mr. Jones has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be that districts would have additional options to serve eligible students in Grades 9-12 using flexible schedules and allowing students to maintain less than or more than a full course load while continuing to receive state funding via alternative methods of student attendance accounting. There could be an effect on small businesses. Student attendance accounting system vendors may incur costs to provide automated methods for recording minutes/hours for student attendance purposes for this program and these costs may be passed on to school districts if they wish to use an automated method for recording attendance. Currently these costs are unknown but may be affected by local school district demand for automation to support this method of student attendance accounting. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

The public comment period on the proposal begins February 23, 2007, and ends March 25, 2007. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463- 0028. All requests for a public hearing on the proposed new section submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The new section is proposed under the Texas Education Code, §29.0822, which authorizes the commissioner of education to adopt rules for the administration of the Optional Flexible School Day Program, including rules establishing application requirements.

The new section implements the Texas Education Code, §29.0822.

§129.1027. Optional Flexible School Day Program.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--Texas Education Agency.

(2) Campus--For the purposes of this section, a campus is an organization that provides instructional services to students in Grades 9 - 12, maintains a separate budget, and has an administrator whose primary duty is the full-time administration of the campus.

(3) Commissioner--Commissioner of education.

(4) Instructional contact hours--For purposes of this section, instructional contact hours are the hours spent learning the curriculum under the direct supervision of an educator meeting the qualifications of the State Board for Educator Certification or the employing charter school.

(5) Optional Flexible School Day Program (OFSDP)--Authorized under the Texas Education Code (TEC), §29.0822, a program approved by the commissioner of education to provide flexible hours and days of attendance for eligible students in Grades 9 - 12, as defined in subsection (b) of this section.

(6) School district--For the purposes of this section, the definition of a school district includes an open-enrollment charter school.

(7) School district board of trustees--For the purposes of this section, the definition of a school district board of trustees includes a charter holder board.

(8) School year--For funding purposes, a school year cannot exceed 1,080 instructional hours in a 12-month consecutive period as adopted by the school district board of trustees.

(b) Student eligibility. A student is eligible to participate in an OFSDP if:

(1) the student is enrolled in Grade 9, 10, 11, or 12 and at least one of the following conditions is satisfied:

(A) the student is at risk of dropping out of school, as defined by the TEC, §29.081;

(B) the student is attending a campus implementing an innovative redesign, as defined by the TEC, §39.132; or

(C) the student is attending an approved early college high school program, as defined by the TEC, §29.908; and

(2) either:

(A) the student and the student's parent, or person standing in parental relation to the student, agree in writing to the student's participation if the student is less than 18 years of age and not emancipated by marriage or court order; or

(B) the student agrees in writing to participate if the student is 18 years of age or older.

(c) Application to operate an OFSDP. Any school district may apply for authorization to operate an OFSDP.

(1) Application process.

(A) The Agency shall make available to each eligible school district an application form for initial approval or renewal that must be completed and submitted annually to the Agency for approval.

(B) The board of trustees of a school district must approve the application. The board of trustees of a school district must include the OFSDP as an item on a regular agenda for a board meeting providing options for public input concerning the proposed application before applying to operate an OFSDP.

(C) A school district must submit an application in accordance with instructions provided by the Agency.

(D) As part of the application process, a school district shall include the following information: implementation plan description, staff plans, schedules, and student attendance accounting security procedures and documentation.

(E) The school district must have submitted the required annual audit report for the immediate prior fiscal year to the

Agency division responsible for financial audits. The annual audit must be determined by the Agency to be in compliance with applicable audit standards.

(F) The commissioner may consider academic and financial performance at a campus or a district when reviewing application qualifications.

(G) The Agency may defer or reject an application based on pending or final audit of data submitted, irregularities in assessment administration, accreditation status, accountability ratings, or sanctions under the TEC, Chapter 39.

(H) The Agency may grant or reject an entire application or grant or reject any campus submitted on an application.

(I) The Agency will notify each applicant of its approval or non approval to operate an OFSDP.

(2) Participation in 2006-2007 school year. For the 2006-2007 school year, a school district must have received notice of approval from the Agency prior to participating in the program. This paragraph expires August 31, 2007.

(3) Participation in 2007-2008 and subsequent school years. For the 2007-2008 school year and subsequent school years, a school district must submit an initial or renewal application 90 days prior to the start date of the program. The school district must receive notice of approval to continue or begin participation in the program.

(d) Attendance. A school district must report student OFSDP attendance in a manner provided by the Agency in the Student Attendance Accounting Handbook adopted under §129.1025 of this title (relating to Adoption By Reference: Student Attendance Accounting Handbook). Funding for attendance in an OFSDP is proportionate to attendance in a full-time program meeting the requirements of the TEC, §25.081 and §25.082.

(e) Funding under the TEC, Chapters 41, 42, and 46. Attendance in an OFSDP that is not authorized or does not meet the requirements of the TEC, §29.0822, or this section is not eligible for state funding.

(f) Extracurricular participation. A student enrolled in an OFSDP may participate in a competition or activity sanctioned by the University Interscholastic League (UIL) only if the student meets all UIL eligibility criteria.

(g) Conditions of program operation. A school district and campus operating an OFSDP must comply with all assurances in the program application. Approved OFSDPs will be required to submit annually one progress report on a form to be provided by the Agency and signed by the district superintendent or executive officer. The data in the progress reports must be disaggregated by ethnicity, age, gender, and socioeconomic status. Approved OFSDPs will submit data as stated in the assurances section of the program application.

(1) A school district with a campus operating an OFSDP must reapply annually to continue to operate an OFSDP to verify that student eligibility requirements specified in subsection (b) of this section are met.

(2) A student participating in an OFSDP must take all assessment instruments as defined by the TEC, §39.023, during the regularly scheduled administration periods.

(3) A school district operating an OFSDP must conduct audits every other year of the OFSDP student attendance processes, procedures, and data quality to maintain eligibility for the program. Audits may be conducted by an internal auditor, external auditor, or an authorized school district administrator responsible for student attendance accounting.

(4) The commissioner may consider academic performance and student attendance accounting documentation and procedures to continue district or campus eligibility for the OFSDP.

(h) School district annual performance review.

(1) Annually, each school district shall review its progress in relation to the performance indicators required by this subsection. Progress should be assessed based on information that is disaggregated with respect to race, ethnicity, gender, and socioeconomic status.

(A) A school district must include high school graduation as one of the performance indicators for students participating in the OFSDP.

(B) A school district operating an OFSDP for a campus will select and report student performance indicators appropriate to the population being served. The selected performance indicators must measure student achievement on an annual basis.

(2) At an open meeting of the board of trustees, a school district shall establish and review annual performance goals for the OFSDP related to performance indicators appropriate to the program, as established in paragraph (1) of this subsection and approved by the Agency.

(3) A school district shall ensure that decisions on the continuation of the OFSDP are based on state student assessment results and other student performance data.

(i) Evaluation of programs.

(1) The Agency shall evaluate the OFSDP based on performance indicators established in subsection (h) of this section.

(2) In addition to the evaluation on the indicators identified in subsection (h) of this section, a school district shall be evaluated based on student assessment administration and student attendance accounting processes and procedures.

(j) Revocation of or denial to renew authorization to operate an OFSDP.

(1) The commissioner may revoke authorization or deny renewal of an OFSDP based on the following factors:

(A) noncompliance with application assurances and/or the provisions of this section;

(B) failure to keep timely and accurate audit and attendance accounting records;

(C) failure to maintain student eligibility requirements specified in subsection (b) of this section if one of these designations was used as an eligibility criteria for OFSDP;

(D) lack of program success as evidenced by progress reports or program data; or

(E) failure to provide accurate, timely, and complete information as required by the Agency to evaluate the effectiveness of the OFSDP.

(2) A revocation or non-renewal of an approved OFSDP takes effect for the semester immediately following the date on which the revocation or non-renewal is issued unless another date is determined by the commissioner.

(3) An OFSDP is entitled to a ten-day notice of the proposed revocation or non-renewal and an informal review by the commissioner's designee.

(4) A decision by the commissioner to revoke the authorization or deny renewal of an OFSDP is final and may not be appealed.

(5) The OFSDP is a state program that may be monitored by an on-site visit under the TEC, §39.075. Student attendance accounting records are subject to audit under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes). The commissioner may impose sanctions on a school district under the TEC, §39.131, for failure to comply with the OFSDP requirements of this section.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 12, 2007.

TRD-200700407
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Earliest possible date of adoption: March 25, 2007
For further information, please call: (512) 475-1497

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 80. CONTESTED CASE HEARINGS
SUBCHAPTER C. HEARING PROCEDURES

30 TAC §80.108

The Texas Commission on Environmental Quality (commission) proposes an amendment to §80.108.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The proposed amendment will provide the commission with the express authority to direct the executive director to participate as a party in contested case hearings regarding certain permit applications. The amendment would revise only the mandatory abstention subsection of the existing rule, which currently provides that the executive director shall not participate as a party in contested case hearings regarding permit applications for seven types of applications. This change will afford the commission the opportunity to benefit from the executive director's specialized knowledge by participating in some of these contested case hearings. Although these types of applications were initially included because they were identified as less complex or not having unique conditions, experience has shown that technical and policy issues in these types of cases may warrant participation by the executive director as a party. It will also ensure that the administrative record is complete.

Prior to September 1, 2001, Texas Water Code, §5.228 required the executive director of the commission to participate as a party in all contested case hearings. As a result of public testimony received during its comprehensive review of the commission, the Sunset Advisory Commission recommended that the statute be changed to allow, rather than require, the executive director to participate in contested case permit hearings. The Sunset Advisory Commission also recommended that: 1) the role of the executive director be more clearly defined; 2) that the executive director be expressly prohibited from rehabilitating non-agency witnesses in permit hearings; and (3) that the commission adopt rules specifying the factors the executive director must take into account when considering whether to be a party in a permit hearing.

This recommendation was adopted in House Bill (HB) 2912, (77th Legislature, 2001) the Sunset Bill for the commission. Under HB 2912, Texas Water Code, §5.228 was amended to provide that the executive director is required to be a party in a contested case hearing only in a matter where the executive director bears the burden of proof (e.g., an enforcement proceeding). For permit hearings, the executive director may be a party only for the purpose of providing information to complete the administrative record. The commission is required to specify, by rule, the factors the executive director must consider in determining, on a case-by-case basis, whether to participate in a hearing as a party. Factors the commission must consider in developing these rules include: 1) the technical, legal, and financial capacities of the parties; 2) whether the parties have previously participated in a hearing; 3) the complexity of the issues; and 4) the available resources of commission staff. The executive director is expressly prohibited from rehabilitating the testimony of non-agency witnesses or from assisting an applicant in meeting its burden of proof unless that applicant fits a category of permit applicants that under commission rule are eligible for such assistance. The amendments to Texas Water Code, §5.228 took effect September 1, 2001, and apply only to hearings in which the executive director is named as a party on or after that date. Section 80.108 was one of the new rules adopted by the commission, effective November 15, 2001, implementing the revisions to Texas Water Code, §5.228.

SECTION DISCUSSION

Section 80.108 is proposed to be amended by adding subsection (m) which provides an option for the commission to direct the executive director to participate as a party in the types of hearings listed in subsections (a) and (c).

In addition, cross-references in subsection (a)(4) and (5) are proposed to be updated.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rule is in effect, there are no significant fiscal implications for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rule. Implementation of the proposed rule may result in the executive director participating as a party in more contested case hearings for certain types of permits. As a result, the executive director may be required to allocate staff resources to attend more hearings. However, any allocation of resources to participate in these hearings is not anticipated to result in any significant fiscal implications for the agency, local governments, or other parties in contested case hearings.

The proposed rule would revise the mandatory abstention in §80.108(a)(1) - (7) to provide the commission with the express authority to direct the executive director to participate as a party in contested case hearings regarding the types of permit applications cited. The proposed revision would give the commission the option to direct the executive director, as a party,

to participate in contested case hearings before the State Office of Administrative Hearings (SOAH) for certain types of air, water quality, and waste permits and would afford the commission the benefit of the executive director's specialized knowledge. Experience has shown that this knowledge may be helpful and warranted where technical and policy issues are part of a contested case hearing regarding municipal solid waste permits where land use is the sole issue; air quality standard permits authorizing concrete batch plants under the Texas Health and Safety Code, §382.05195; air permits authorizing emissions from facilities which solely emit the types of emissions that do not require health and welfare effects review as specified on the Toxicology and Risk Assessment Section Emissions Screening List; the municipal solid waste transfer facilities; permits to process grit and grease trap waste; permits for composting facilities; and permit applications solely authorizing the irrigation of domestic or municipal wastewater effluent. Any costs for the agency, for applicants, or for protestants in these hearings because of executive director participation are anticipated to be insignificant.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be the benefit of having more complete information being presented to SOAH and the commission for decisions regarding contested cases on the types of air, water quality, and municipal solid waste permits listed in §80.108(a)(1) - (7).

Any increase or decrease in costs to applicants or protestants in these hearings due to the participation of the executive director as a party in these hearings is not anticipated to be significant.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rule. Any increase or decrease in costs due to the participation of the executive director as a party in contested cases for the affected permits is not anticipated to be significant in nature.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a).

"Major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Because the specific intent of the proposed rulemaking is procedural in nature and establishes procedures for the executive director's participation as a party in contested case hearings on permitting matters, the rulemaking does not meet the definition of a major environmental rule.

In addition, even if the proposed rule is a major environmental rule, a draft regulatory impact assessment is not required because the rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or propose to adopt a rule solely under the general powers of the agency. This proposal does not exceed a standard set by federal law. This proposal does not exceed an express requirement of state law because it is authorized by Texas Government Code, §2001.004, which requires state agencies to adopt rules of practice; and Texas Water Code, §5.228, as well as the other statutory authorities cited in the STATUTORY AUTHORITY section of this preamble. This proposal does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program because the rule is consistent with, and does not exceed, federal requirements, and is in accordance with Texas Water Code, §5.228, which expressly requires the commission to adopt rules necessary to specify the factors the executive director must consider in determining whether to participate as a party in a contested case permit hearing. This proposal does not adopt a rule solely under the general powers of the agency, but rather under specific state law. Finally, this rulemaking is not being proposed or adopted on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rule and performed an analysis of whether Texas Government Code, Chapter 2007 is applicable. The commission's analysis indicates that Texas Government Code, Chapter 2007 does not apply to the proposed rule. Nevertheless, the commission further evaluated the proposed rule as to whether the rule constitutes a takings under Texas Government Code, Chapter 2007. The specific primary purpose of the proposed rule is to revise a commission rule to establish procedures for executive director party participation in certain contested case hearings as required by Texas Water Code, §5.228. The proposal relates to when the executive director will participate as a party as directed to do so by the commission. The proposed rule will substantially advance this purpose by providing the commission the express authority to direct the executive director to participate as a party. Promulgation and enforcement of this rule will not affect private real property which is the subject of the rules because the proposed language relates to procedural matters relating to executive director party status rather than any substantive requirements.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rule is not subject to the Texas Coastal Management Program.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087; or faxed to (512)

239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/*. All comments should reference Rule Project Number 2007-003-080-LS. The comment period closes March 26, 2007. Copies of the proposed rule can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information, please contact Janis Hudson, Environmental Law Division, (512) 239-0466.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code, §5.013, concerning General Jurisdiction of the commission, which establishes the commission's general authority to carry out its jurisdiction; §5.102, concerning the commission's General Powers, including calling and holding hearings and issuing orders; §5.103, concerning Rules, which requires the commission to adopt rules when amending any agency statement of general applicability that describes the procedures or practice requirements of an agency; and §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and §5.228, which establishes the executive director's authority to participate in contested case hearings. Additionally, the amendment is proposed under Texas Government Code, §2001.004, concerning Requirement to Adopt Rules of Practice and Index Rules, Orders and Decisions, which requires state agencies to adopt rules of practice and procedure.

The proposed amendment implements Texas Water Code, §5.228.

§80.108. Executive Director Party Status in Permit Hearings.

(a) Except to the extent superseded by subsection (b) of this section, the executive director shall not participate as a party in the following contested case hearings concerning permitting matters:

(1) - (3) (No change.)

(4) an application for a permit for a municipal solid waste transfer facility under §330.7 [~~§330.4~~] of this title (relating to Permit Required);

(5) an application for a permit for the processing of grit and grease trap waste under under §330.7 [~~§330.4~~] of this title;

(6) - (7) (No change.)

(b) - (l) (No change.)

(m) Notwithstanding the requirements of subsections (a) and (c) of this section regarding executive director party participation, the executive director shall participate as a party if directed to do so by the commission.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 9, 2007.

TRD-200700381
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 25, 2007
For further information, please call: (512) 239-6087

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CHAPTER 101. GENERAL AIR QUALITY RULES

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§101.1, 101.23, 101.302, 101.306, 101.350, 101.351, 101.353, 101.354, 101.360, 101.372, 101.376, 101.383, and 101.385 and the repeal of §101.22.

The amended sections and repeal will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the Texas State Implementation Plan (SIP).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

The commission has proposed revisions to Title 30 Texas Administrative Code (30 TAC) Chapter 117, Control of Air Pollution from Nitrogen Compounds, as part of the SIP for the Houston-Galveston-Brazoria (HGB) and Dallas-Fort Worth (DFW) nonattainment areas. Under those revisions, Chapter 117 would be reorganized. Chapter 101, General Air Quality Rules, contains references to sections of Chapter 117 which are changing due to the reorganization, requiring that the cited references in Chapter 101 also change. This proposal also includes revisions identified during the last review of Chapter 101, including changes to the definitions of visible emissions, cold solvent cleaning, conveyorized degreasing, open-top vapor degreasing, high-volume low-pressure spray guns, and standard conditions. Other proposed changes would delete the definitions of hazardous waste management facility and hazardous waste management unit, add a definition for nitrogen oxides, update references to include the correct title of the commission, and remove an obsolete effective date section.

SECTION BY SECTION DISCUSSION

§101.1. Definitions.

The commission proposes to modify the opening paragraph of this section to specify that the definitions in §101.1 apply to all air quality rules. The commission proposes to change the definitions of cold solvent cleaning, conveyorized degreasing, and open-top vapor degreasing by deleting the word "metal" so that the processes also apply to cleaning non-metal parts. The commission proposes to delete the definitions of hazardous waste management facility and hazardous waste management unit because they are not found in any of the air rules. The proposed revision to the definition of high-volume low-pressure spray guns specifies that the operating pressure of this equipment is measured at the air cap because this provides the most accurate measurement. The commission proposes to add the definition from Chapter 117 of nitrogen oxides because this is a common term used throughout the commission's air quality rules. The commission proposes to delete the last sentence of the definition of standard conditions that reads: "Pollutant concentrations from an incinerator will be corrected to a condition of 50% excess air if the incinerator is operating at greater than 50% excess air." The amount of air present in combustion is a variable and does not qualify as a standard condition. The commission proposes to change the second sentence of the definition of visible emissions to read: "The radiant energy from an open flame is not considered a visible emission under this definition." Radiant energy may manifest some visual effects but there is no air contaminant emitted.

§101.22. Effective Date.

The commission proposes the repeal of this section because it is no longer required.

§101.23. Alternate Emission Reduction ("Bubble") Policy.

The commission proposes to replace references to Texas Air Control Board with Texas Commission on Environmental Quality (TCEQ). The commission proposes to replace the reference to "Regulations I, II, III, V, VII, and IX" with "Chapters 111, 112, 113, 115, and 117." The reference to Chapter 119 was removed because this chapter has been repealed. The commission proposes to replace a reference to the obsolete term "board order" with "commission order." In the last sentence of the section, the commission proposes to replace "he" with "the executive director."

§101.302. General Provisions.

The commission proposes to replace references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§101.306. Emission Credit Use.

The commission proposes to replace references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§101.350. Definitions

The commission proposes replacing the definition of Houston/Galveston (HGA) ozone nonattainment area with Houston-Galveston-Brazoria (HGB) ozone nonattainment area because the name of the nonattainment area has changed.

§101.351. Applicability.

The commission proposes to replace references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§101.353. Allocation of Allowances.

The commission proposes to replace references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§101.354. Allowance Deductions.

The commission proposes to replace references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§101.360. Level of Activity Certification.

The commission proposes to replace references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§101.372. General Provisions.

The commission proposes to replace references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§101.376. Discrete Emission Credit Use.

The commission proposes to replace references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§101.383. General Provisions.

The commission proposes to replace references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

§101.385. Recordkeeping and Reporting.

The commission proposes to replace references to Chapter 117 section numbers with the newly renumbered Chapter 117 sections.

The commission also proposes minor administrative changes to address conformity to: *Texas Register* requirements and other agency rules and guidelines.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The proposed rules are administrative in nature and will amend sections of Chapter 101 to coincide correctly with proposed changes to Chapter 117. Fiscal implications pertaining to the proposed rules for Chapter 117 can be found in that rule package.

The commission previously proposed a reorganization and revision of Chapter 117 as part of the SIP for the HGB and DFW nonattainment areas. This proposed revision to Chapter 117 also requires revision of Chapter 101 so that cited references in the two chapters agree with one another. The proposed rule changes to Chapter 101 will also revise definitions of visible emissions, cold solvent cleaning, conveyorized degreasing, open-top vapor degreasing, high-volume low-pressure spray guns, and standard conditions. The proposed rules will also delete the definitions of hazardous waste management facility and hazardous waste management unit, add a definition for nitrogen oxides, and make minor administrative changes to update obsolete information contained in the current rules.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be a more correct set of general rules governing air emissions that allow the regulated community to comply with federal and state laws with greater ease and efficiency.

The proposed rules will affect entities that must currently comply with regulations promulgated in Chapter 101. Businesses and individuals are not expected to experience any fiscal implications as a result of the proposed rules, which make administrative changes to Chapter 101 to coincide with proposed amendments to and reorganization of Chapter 117.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules, which are administrative in nature.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this proposal is not subject to §2001.0225 because it does not meet the definition of a major environmental rule as defined in that statute. A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Although the specific intent is to protect the environment, these proposed amendments are mainly an administrative action only, to correct and update cross-references to Chapter 117, which is being reorganized, modify certain definitions, and make other procedural changes to Chapter 101.

Chapter 117, Control of Air Pollution from Nitrogen Compounds, is currently proposed for reorganization. Chapter 101, General Air Quality Rules, contains extensive references to sections of Chapter 117 that are changing because of the reorganization. The references contained in Chapter 101 must change accordingly. This proposal also includes revisions identified during the last review of Chapter 101 by the executive director and includes changes to the definitions of visible emissions, cold solvent cleaning, conveyorized degreasing, open-top vapor degreasing, high-volume low-pressure spray guns, and standard conditions. Other proposed changes would delete the definitions of hazardous waste management facility and hazardous waste management unit, add a definition for nitrogen oxides, update references to the title of the commission, and remove an obsolete effective date section. The adopted rules will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, a draft regulatory impact analysis is not required because the rules do not meet any of the four applicability criteria for requiring a regulatory analysis of a major environmental rule as defined in the Texas Government Code. Section 2001.0225 applies only to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not exceed a standard set by federal law, and the adopted requirements are consistent with applicable federal standards. In addition, this proposal does not exceed an express requirement of state law and is not adopted solely under the general powers of the agency, but is specifically authorized by the provisions cited in the STATUTORY AUTHORITY section of this preamble. Finally, this rulemaking does not exceed a requirement of a delegation agreement or contract to implement a state and federal program.

The commission invites public comment on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated this rulemaking action and performed an analysis of whether the adopted rules are subject to Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to update references to sections of Chapter 117, which is being reorganized, to modify certain definitions, and to make other procedural changes to Chapter 101. These amendments do not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, promulgation and enforcement of these proposed rules is neither a statutory nor a constitutional taking because they do not affect private real property. Therefore, these rules do not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the amendments are consistent with CMP goals and policies. The CMP goal applicable to this rulemaking action is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (31 TAC §501.12(1)). The proposed rules update references and definitions. No new sources of air contaminants will be authorized and the revisions will maintain the same level of emissions control as previous rules. The CMP policy applicable to this rulemaking action is the policy that the commission's rules comply with federal regulations in 40 Code of Federal Regulations, to protect and enhance air quality in the coastal areas (31 TAC §501.14(q)). This rulemaking action complies with 40 Code of Federal Regulations Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans. Therefore, in accordance with 31 TAC §505.22(e), the commission affirms that this rulemaking action is consistent with CMP goals and policies. Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The amended sections are applicable requirements under the Federal Operating Permits Program, but no revisions to operating permits will be required.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on March 20, 2007, at 10:00 a.m. in Building B, Room 201A, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Lola Brown, Office of Legal Services, at (512) 239-0348. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments/.* All comments should reference Rule Project Number 2006-053-101-PR. The comment period closes March 26, 2007. Copies of the proposed rules can be obtained from the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html.* For further information, please contact Becky Southard, Air Permits Division, at (512) 239-1638 or Tara Capobianco, Air Permits Division, at (512) 239-1117.

SUBCHAPTER A. GENERAL RULES

30 TAC §101.1, §101.23

STATUTORY AUTHORITY

The amended sections are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended sections are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. The amended sections are also proposed under THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; and §382.051 and §382.0518, concerning Permitting Authority of Commission and Preconstruction Permit, that authorize the commission to issue preconstruction and operating air permits. The amended sections are also proposed under 42 United States Code, §7410(a)(2)(A), that requires SIPs to include enforceable measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The amended sections implement THSC, §§382.002, 382.011, 382.012, and 382.017; and Senate Bill 784, 79th Legislature, 2005.

§101.1. Definitions.

Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the commission, the terms used by the commission have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms that are defined by the TCAA, the following terms, when used in relation to air quality rules in this title [~~chapter~~], have the following meanings, unless the context clearly indicates otherwise.

(1) Account--For those sources required to be permitted under Chapter 122 of this title (relating to Federal Operating Permits Program), all sources that are aggregated as a site. For all other sources, any combination of sources under common ownership or control and located on one or more contiguous properties, or properties contiguous except for intervening roads, railroads, rights-of-way, waterways, or similar divisions.

(2) - (11) (No change.)

(12) Cold solvent cleaning--A batch process that uses liquid solvent to remove soils from the surfaces of [~~metal~~] parts or to dry the parts by spraying, brushing, flushing, and/or immersion while maintaining the solvent below its boiling point. Wipe cleaning (hand cleaning) is not included in this definition.

(13) - (21) (No change.)

(22) Conveyorized degreasing--A solvent cleaning process that uses an automated parts handling system, typically a conveyor, to automatically provide a continuous supply of [~~metal~~] parts to be cleaned or dried using either cold solvent or vaporized solvent. A conveyorized degreasing process is fully enclosed except for the conveyor inlet and exit portals.

(23) - (41) (No change.)

[~~(42) Hazardous waste management facility--All contiguous land, including structures, appurtenances, and other improvements on the land, used for processing, storing, or disposing of hazardous waste. The term includes a publicly or privately owned hazardous waste management facility consisting of processing, storage, or disposal operational hazardous waste management units such as one or more landfills, surface impoundments, waste piles, incinerators, boilers, and industrial furnaces, including cement kilns, injection wells, salt dome waste containment caverns, land treatment facilities, or a combination of units.~~]

[~~(43) Hazardous waste management unit--A landfill, surface impoundment, waste pile, boiler, industrial furnace, incinerator, cement kiln, injection well, container, drum, salt dome waste containment cavern, or land treatment unit, or any other structure, vessel, appurtenance, or other improvement on land used to manage hazardous waste.~~]

(42) [~~(44)~~] Hazardous wastes--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act, 42 United States Code, §§6901 *et seq.*, as amended.

(43) [~~(45)~~] Heatset (used in offset lithographic printing)--Any operation where heat is required to evaporate ink oil from the printing ink. Hot air dryers are used to deliver the heat.

(44) [~~(46)~~] High-bake coatings--Coatings designed to cure at temperatures above 194 degrees Fahrenheit.

(45) [~~(47)~~] High-volume low-pressure spray guns--Equipment used to apply coatings by means of a spray gun that operates between 0.1 and 10.0 pounds per square inch gauge air pressure measured at the air cap.

(46) [~~(48)~~] Incinerator--An enclosed combustion apparatus and attachments that is used in the process of burning wastes for the primary purpose of reducing its volume and weight by removing the combustibles of the waste and is equipped with a flue for conducting products of combustion to the atmosphere. Any combustion device that burns 10% or more of solid waste on a total British thermal unit (Btu) heat input basis averaged over any one-hour period is considered to be an incinerator. A combustion device without instrumentation or methodology to determine hourly flow rates of solid waste and burning 1.0% or more of solid waste on a total Btu heat input basis averaged annually is also considered to be an incinerator. An open-trench type (with closed ends) combustion unit may be considered an incinerator

when approved by the executive director. Devices burning untreated wood scraps, waste wood, or sludge from the treatment of wastewater from the process mills as a primary fuel for heat recovery are not included under this definition. Combustion devices permitted under this title as combustion devices other than incinerators will not be considered incinerators for application of any rule within this title provided they are installed and operated in compliance with the condition of all applicable permits.

(47) [~~(49)~~] Industrial boiler--A boiler located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes.

(48) [~~(50)~~] Industrial furnace--Cement kilns; lime kilns; aggregate kilns; phosphate kilns; coke ovens; blast furnaces; smelting, melting, or refining furnaces, including pyrometallurgical devices such as cupolas, reverberator furnaces, sintering machines, roasters, or foundry furnaces; titanium dioxide chloride process oxidation reactors; methane reforming furnaces; pulping recovery furnaces; combustion devices used in the recovery of sulfur values from spent sulfuric acid; and other devices the commission may list.

(49) [~~(51)~~] Industrial solid waste--Solid waste resulting from, or incidental to, any process of industry or manufacturing, or mining or agricultural operations, classified as follows.

(A) Class 1 industrial solid waste or Class 1 waste is any industrial solid waste designated as Class 1 by the executive director as any industrial solid waste or mixture of industrial solid wastes that because of its concentration or physical or chemical characteristics is toxic, corrosive, flammable, a strong sensitizer or irritant, a generator of sudden pressure by decomposition, heat, or other means, and may pose a substantial present or potential danger to human health or the environment when improperly processed, stored, transported, or otherwise managed, including hazardous industrial waste, as defined in §335.1 and §335.505 of this title (relating to Definitions and Class 1 Waste Determination).

(B) Class 2 industrial solid waste is any individual solid waste or combination of industrial solid wastes that cannot be described as Class 1 or Class 3, as defined in §335.506 of this title (relating to Class 2 Waste Determination).

(C) Class 3 industrial solid waste is any inert and essentially insoluble industrial solid waste, including materials such as rock, brick, glass, dirt, and certain plastics and rubber, etc., that are not readily decomposable as defined in §335.507 of this title (relating to Class 3 Waste Determination).

(50) [~~(52)~~] Internal floating cover--A cover or floating roof in a fixed roof tank that rests upon or is floated upon the liquid being contained, and is equipped with a closure seal or seals to close the space between the cover edge and tank shell.

(51) [~~(53)~~] Leak--A volatile organic compound concentration greater than 10,000 parts per million by volume or the amount specified by applicable rule, whichever is lower; or the dripping or exuding of process fluid based on sight, smell, or sound.

(52) [~~(54)~~] Liquid fuel--A liquid combustible mixture, not derived from hazardous waste, with a heating value of at least 5,000 British thermal units per pound.

(53) [~~(55)~~] Liquid-mounted seal--A primary seal mounted in continuous contact with the liquid between the tank wall and the floating roof around the circumference of the tank.

(54) [~~(56)~~] Maintenance area--A geographic region of the state previously designated nonattainment under the Federal Clean Air Act Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under 42 United States Code, §7505a. The following are the maintenance areas within the state:

(A) Victoria Ozone Maintenance Area 60 (*Federal Register* (FR) 12453) - Victoria County; and

(B) Collin County Lead Maintenance Area (64 FR 55421) - Portion of Collin County. Eastside: Starting at the intersection of South Fifth Street and the fence line approximately 1,000 feet south of the Exide property line going north to the intersection of South Fifth Street and Eubanks Street; Northside: Proceeding west on Eubanks to the Burlington Railroad tracks; Westside: Along the Burlington Railroad tracks to the fence line approximately 1,000 feet south of the Exide property line; Southside: Fence line approximately 1,000 feet south of the Exide property line.

(55) [~~(57)~~] Maintenance plan--A revision to the applicable state implementation plan, meeting the requirements of 42 United States Code, §7505a.

(56) [~~(58)~~] Marine vessel--Any watercraft used, or capable of being used, as a means of transportation on water, and that is constructed or adapted to carry, or that carries, oil, gasoline, or other volatile organic liquid in bulk as a cargo or cargo residue.

(57) [~~(59)~~] Mechanical shoe seal--A metal sheet that is held vertically against the storage tank wall by springs or weighted levers and is connected by braces to the floating roof. A flexible coated fabric (envelope) spans the annular space between the metal sheet and the floating roof.

(58) [~~(60)~~] Medical waste--Waste materials identified by the Department of State Health Services as "special waste from health care-related facilities" and those waste materials commingled and discarded with special waste from health care-related facilities.

(59) [~~(61)~~] Metropolitan Planning Organization--That organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 United States Code (USC), §134 and 49 USC, §1607.

(60) [~~(62)~~] Mobile emissions reduction credit--The credit obtained from an enforceable, permanent, quantifiable, and surplus (to other federal and state rules) emissions reduction generated by a mobile source as set forth in Chapter 114, Subchapter [~~E or~~] F of this title ([~~relating to Low Emission Vehicle Fleet Requirements and~~] Vehicle Retirement and Mobile Emission Reduction Credits), and that has been banked in accordance with Subchapter H, Division 1 of this chapter.

(61) [~~(63)~~] Motor vehicle--A self-propelled vehicle designed for transporting persons or property on a street or highway.

(62) [~~(64)~~] Motor vehicle fuel dispensing facility--Any site where gasoline is dispensed to motor vehicle fuel tanks from stationary storage tanks.

(63) [~~(65)~~] Municipal solid waste--Solid waste resulting from, or incidental to, municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste except industrial solid waste.

(64) [~~(66)~~] Municipal solid waste facility--All contiguous land, structures, other appurtenances, and improvements on the land used for processing, storing, or disposing of solid waste. A facility may be publicly or privately owned and may consist of several processing, storage, or disposal operational units, e.g., one or more landfills, surface impoundments, or combinations of them.

(65) [~~(67)~~] Municipal solid waste landfill--A discrete area of land or an excavation that receives household waste and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 Code of Federal Regulations §257.2. A municipal solid waste landfill (MSWLF) unit also may receive other types of Resource Conservation and Recovery Act Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small-quantity generator waste, and industrial solid waste. Such a landfill may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion.

(66) [~~(68)~~] National ambient air quality standard--Those standards established under 42 United States Code, §7409, including standards for carbon monoxide, lead, nitrogen dioxide, ozone, inhalable particulate matter, and sulfur dioxide.

(67) [~~(69)~~] Net ground-level concentration--The concentration of an air contaminant as measured at or beyond the property boundary minus the representative concentration flowing onto a property as measured at any point. Where there is no expected influence of the air contaminant flowing onto a property from other sources, the net ground level concentration may be determined by a measurement at or beyond the property boundary.

(68) [~~(70)~~] New source--Any stationary source, the construction or modification of which was commenced after March 5, 1972.

(69) Nitrogen oxides (NO_x)--The sum of the nitric oxide and nitrogen dioxide in the flue gas or emission point, collectively expressed as nitrogen dioxide.

(70) [~~(71)~~] Nonattainment area--A defined region within the state that is designated by the United States Environmental Protection Agency (EPA) as failing to meet the national ambient air quality standard for a pollutant for which a standard exists. The EPA will designate the area as nonattainment under the provisions of 42 United States Code, §7407(d). For the official list and boundaries of nonattainment areas, see 40 Code of Federal Regulations Part 81 and pertinent *Federal Register* (FR) notices. The following areas comprise the nonattainment areas within the state for all national ambient air quality standards (NAAQS). EPA has indicated that it will revoke the one-hour ozone standard in full, including the associated designations and classifications, on June 15, 2005, which is one year following the effective date of the designations for the eight-hour NAAQS of June 15, 2004.

(A) Carbon monoxide (CO). El Paso CO nonattainment area (56 FR 56694)--Classified as a Moderate CO nonattainment area with a design value less than or equal to 12.7 parts per million. Portion of El Paso County. Portion of the city limits of El Paso: That portion of the City of El Paso bounded on the north by Highway 10 from Porfirio Diaz Street to Raynolds Street, Raynolds Street from Highway 10 to the Southern Pacific Railroad lines, the Southern Pacific Railroad lines from Raynolds Street to Highway 62, Highway 62 from the Southern Pacific Railroad lines to Highway 20, and Highway 20 from Highway 62 to Polo Inn Road. Bounded on the east by Polo Inn Road from Highway 20 to the Texas-Mexico border. Bounded on the south by the Texas-Mexico border from Polo Inn Road to Porfirio Diaz Street. Bounded on the west by Porfirio Diaz Street from the Texas-Mexico border to Highway 10.

(B) Inhalable particulate matter (PM_{10}). El Paso PM_{10} nonattainment area (56 FR 56694)--Classified as a Moderate PM_{10} nonattainment area. Portion of El Paso County that comprises the El Paso city limit boundaries as they existed on November 15, 1990.

(C) Lead. No designated nonattainment areas.

(D) Nitrogen dioxide. No designated nonattainment areas.

(E) Ozone (one-hour).

(i) Houston-Galveston-Brazoria (HGB) one-hour ozone nonattainment area (56 FR 56694) - Classified as a Severe-17 ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) El Paso one-hour ozone nonattainment area (56 FR 56694) - Classified as a Serious ozone nonattainment area. Consists of El Paso County.

(iii) Beaumont-Port Arthur (BPA) one-hour ozone nonattainment area (69 FR 16483) - Classified as a Serious ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

(iv) Dallas-Fort Worth one-hour ozone nonattainment area (63 FR 8128) - Classified as a Serious ozone nonattainment area. Consists of Collin, Dallas, Denton, and Tarrant Counties.

(F) Ozone (eight-hour).

(i) HGB eight-hour ozone nonattainment area (69 FR 23936) - Classified as a Moderate ozone nonattainment area. Consists of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

(ii) BPA eight-hour ozone nonattainment area (69 FR 23936) - Classified as a Marginal ozone nonattainment area. Consists of Hardin, Jefferson, and Orange Counties.

(iii) Dallas-Fort Worth eight-hour ozone nonattainment area (69 FR 23936) - Classified as a Moderate ozone nonattainment area. Consists of Collin, Dallas, Denton, Ellis, Johnson, Kaufman, Parker, Rockwall, and Tarrant Counties.

(iv) San Antonio eight-hour ozone nonattainment area (69 FR 23936) - Classified under the Federal Clean Air Act, Title I, Part D, Subpart 1 (42 United States Code, §7502), nonattainment deferred to September 30, 2005, or as extended by EPA.

(G) Sulfur dioxide. No designated nonattainment areas.

(71) [~~(72)~~] Non-reportable emissions event--Any emissions event that in any 24-hour period does not result in an unauthorized emission from any emissions point equal to or in excess of the reportable quantity as defined in this section.

(72) [~~(73)~~] Opacity--The degree to which an emission of air contaminants obstructs the transmission of light expressed as the percentage of light obstructed as measured by an optical instrument or trained observer.

(73) [~~(74)~~] Open-top vapor degreasing--A batch solvent cleaning process that is open to the air and that uses boiling solvent to create solvent vapor used to clean or dry [~~metal~~] parts through condensation of the hot solvent vapors on the colder metal parts.

(74) [~~(75)~~] Outdoor burning--Any fire or smoke-producing process that is not conducted in a combustion unit.

(75) [~~(76)~~] Particulate matter--Any material, except uncombined water, that exists as a solid or liquid in the atmosphere or in a gas stream at standard conditions.

(76) [~~(77)~~] Particulate matter emissions--All finely-divided solid or liquid material, other than uncombined water, emitted to the ambient air as measured by United States Environmental Protection Agency Reference Method 5, as specified at 40 Code of Federal Regulations (CFR) Part 60, Appendix A, modified to include particulate

caught by an impinger train; by an equivalent or alternative method, as specified at 40 CFR Part 51; or by a test method specified in an approved state implementation plan.

(77) [~~(78)~~] Petroleum refinery--Any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of crude oil, or through the redistillation, cracking, extraction, reforming, or other processing of unfinished petroleum derivatives.

(78) [~~(79)~~] PM_{10}--Particulate matter with an aerodynamic diameter less than or equal to a nominal ten micrometers as measured by a reference method based on 40 Code of Federal Regulations (CFR) Part 50, Appendix J, and designated in accordance with 40 CFR Part 53, or by an equivalent method designated with that Part 53.

(79) [~~(80)~~] PM_{10} emissions--Finely-divided solid or liquid material with an aerodynamic diameter less than or equal to a nominal ten micrometers emitted to the ambient air as measured by an applicable reference method, or an equivalent or alternative method specified in 40 Code of Federal Regulations Part 51, or by a test method specified in an approved state implementation plan.

(80) [~~(81)~~] Polychlorinated biphenyl compound--A compound subject to 40 Code of Federal Regulations Part 761.

(81) [~~(82)~~] Process or processes--Any action, operation, or treatment embracing chemical, commercial, industrial, or manufacturing factors such as combustion units, kilns, stills, dryers, roasters, and equipment used in connection therewith, and all other methods or forms of manufacturing or processing that may emit smoke, particulate matter, gaseous matter, or visible emissions.

(82) [~~(83)~~] Process weight per hour--"Process weight" is the total weight of all materials introduced or recirculated into any specific process that may cause any discharge of air contaminants into the atmosphere. Solid fuels charged into the process will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. The "process weight per hour" will be derived by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during that the equipment used to conduct the process is idle. For continuous operation, the "process weight per hour" will be derived by dividing the total process weight for a 24-hour period by 24.

(83) [~~(84)~~] Property--All land under common control or ownership coupled with all improvements on such land, and all fixed or movable objects on such land, or any vessel on the waters of this state.

(84) [~~(85)~~] Reasonable further progress--Annual incremental reductions in emissions of the applicable air contaminant that are sufficient to provide for attainment of the applicable national ambient air quality standard in the designated nonattainment areas by the date required in the state implementation plan.

(85) [~~(86)~~] Regulated entity--All regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. The term includes any property under common ownership or control identified in a permit or used in conjunction with the regulated activity at the same street address or location. Owners or operators of pipelines, gathering lines, and flowlines under common ownership or control in a particular county may be treated as a single regulated entity for purposes of assessment and regulation of emissions events.

(86) [~~(87)~~] Remote reservoir cold solvent cleaning--Any cold solvent cleaning operation in which liquid solvent is pumped to a sink-like work area that drains solvent back into an enclosed container while parts are being cleaned, allowing no solvent to pool in the work area.

(87) [~~(88)~~] Reportable emissions event--Any emissions event that in any 24-hour period, results in an unauthorized emission from any emissions point equal to or in excess of the reportable quantity as defined in this section.

(88) [~~(89)~~] Reportable quantity (RQ)--Is as follows:

(A) for individual air contaminant compounds and specifically listed mixtures by name or Chemical Abstracts Service (CAS) number, either:

(i) the lowest of the quantities:

(I) listed in 40 Code of Federal Regulations (CFR) Part 302, Table 302.4, the column "final RQ";

(II) listed in 40 CFR Part 355, Appendix A, the column "Reportable Quantity"; or

(III) listed as follows:

(-a-) acetaldehyde - 1,000 pounds, except in the Houston-Galveston-Brazoria (HGB) and Beaumont-Port Arthur (BPA) ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) [~~(71)(E)(i) and (iii)~~] of this section, where the RQ must be 100 pounds;

(-b-) butanes (any isomer) - 5,000 pounds;

(-c-) butenes (any isomer, except 1,3-butadiene) - 5,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) [~~(71)(E)(i) and (iii)~~] of this section, where the RQ must be 100 pounds;

(-d-) carbon monoxide - 5,000 pounds;

(-e-) 1-chloro-1,1-difluoroethane (HCFC-142b) - 5,000 pounds;

(-f-) chlorodifluoromethane (HCFC-22) - 5,000 pounds;

(-g-) 1-chloro-1-fluoroethane (HCFC-151a) - 5,000 pounds;

(-h-) chlorofluoromethane (HCFC-31) - 5,000 pounds;

(-i-) chloropentafluoroethane (CFC-115) - 5,000 pounds;

(-j-) 2-chloro-1,1,1,2-tetrafluoroethane (HCFC-124) - 5,000 pounds;

(-k-) 1-chloro-1,1,2,2 tetrafluoroethane (HCFC-124a) - 5,000 pounds;

(-l-) 1,1,1,2,3,4,4,5,5,5-decafluoropentane (HFC 43-10mee) - 5,000 pounds;

(-m-) decanes (any isomer) - 5,000 pounds;

(-n-) 1,1-dichloro-1-fluoroethane (HCFC-141b) - 5,000 pounds;

(-o-) 3,3-dichloro-1,1,2,2-pentafluoropropane (HCFC-225ca) - 5,000 pounds;

(-p-) 1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb) - 5,000 pounds;

(-q-) 1,2-dichloro-1,1,2,2-tetrafluoroethane (CFR-114) - 5,000 pounds;

(-r-) 1,1[,]- dichlorotetrafluoroethane (CFC-114a) - 5,000 pounds;

(-s-) 1,2-dichloro-1,1,2-trifluoroethane (HCFC-123a) - 5,000 pounds;

(-t-) 1,1-difluoroethane (HFC-152a) - 5,000 pounds;

(-u-) difluoromethane (HFC-32) - 5,000 pounds;

(-v-) ethanol - 5,000 pounds;

(-w-) ethylene - 5,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) [~~(71)(E)(i) and (iii)~~] of this section, where the RQ must be 100 pounds;

(-x-) ethylfluoride (HFC-161) - 5,000 pounds;

(-y -) 1,1,1,2,3,3,3-heptafluoropropane (HFC-227ea);

(-z-) 1,1,1,3,3,3-hexafluoropropane (HFC-236fa) - 5,000 pounds;

(-aa-) 1,1,1,2,3,3-hexafluoropropane (HFC-236ea) - 5,000 pounds;

(-bb-) hexanes (any isomer) - 5,000 pounds;

(-cc-) isopropyl alcohol - 5,000 pounds;

(-dd-) mineral spirits - 5,000 pounds;

(-ee-) octanes (any isomer) - 5,000 pounds;

(-ff-) oxides of nitrogen - 200 pounds in ozone nonattainment, ozone maintenance, early action compact areas, Nueces County, and San Patricio County, and 5,000 pounds in all other areas of the state, which should be used instead of the RQs for nitrogen oxide and nitrogen dioxide provided in 40 CFR Part 302, Table 302.4, the column "final RQ";

(-gg-) pentachlorofluoroethane (CFR-111) - 5,000 pounds;

(-hh-) 1,1,1,3,3-pentafluorobutane (HFC-365mfc) - 5,000 pounds;

(-ii-) pentafluoroethane (HFC-125) - 5,000 pounds;

(-jj-) 1,1,2,2,3-pentafluoropropane (HFC-245ca) - 5,000 pounds;

(-kk-) 1,1,2,3,3-pentafluoropropane (HFC-245ea) - 5,000 pounds;

(-ll-) 1,1,1,2,3-pentafluoropropane (HFC-245eb) - 5,000 pounds;

(-mm-) 1,1,1,3,3-pentafluoropropane (HFC-245fa) - 5,000 pounds;

(-nn-) pentanes (any isomer) - 5,000 pounds;

(-oo-) propane - 5,000 pounds;

(-pp-) propylene - 5,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) [~~(71)(E)(i) and (iii)~~] of this section, where the RQ must be 100 pounds;

(-qq-) 1,1,2,2-terachlorodifluoroethane (CFR -112) - 5,000 pounds;

(-rr-) 1,1,1,2-tetrachlorodifluoroethane (CFC-112a) -5,000 pounds;

(-ss-) 1,1,2,2-tetrafluoroethane (HFC-134) - 5,000 pounds;

(-tt-) 1,1,1,2-tetrafluoroethane (HFC-134a) - 5,000 pounds;

(-uu-) 1,1,2-trichloro-1,2,2-trifluoroethane (CFR-113) - 5,000 pounds;

(-vv-) 1,1,1-trichloro- 2,2,2- trilfloroethane (CFC-113a) - 5,000 pounds;

(-ww-) 1,1,1-trifluoro-2,2-dichloroethane (HCFC-123) - 5,000 pounds;

(-xx-) 1,1,1-trifluoroethane (HFC-143a) - 5,000 pounds;

(-yy-) trifluoromethane (HFC-23) - 5,000 pounds; or

(-zz-) toluene - 1,000 pounds, except in the HGB and BPA ozone nonattainment areas as defined in paragraph (70)(E)(i) and (iii) [~~(71)(E)(i) and (iii)~~] of this section, where the RQ must be 100 pounds;

(ii) if not listed in clause (i) of this subparagraph, 100 pounds;

(B) for mixtures of air contaminant compounds:

(i) where the relative amount of individual air contaminant compounds is known through common process knowledge or prior engineering analysis or testing, any amount of an individual air contaminant compound that equals or exceeds the amount specified in subparagraph (A) of this paragraph;

(ii) where the relative amount of individual air contaminant compounds in subparagraph (A)(i) of this paragraph is not known, any amount of the mixture that equals or exceeds the amount for any single air contaminant compound that is present in the mixture and listed in subparagraph (A)(i) of this paragraph;

(iii) where each of the individual air contaminant compounds listed in subparagraph (A)(i) of this paragraph are known to be less than 0.02% by weight of the mixture, and each of the other individual air contaminant compounds covered by subparagraph (A)(ii) of this paragraph are known to be less than 2.0% by weight of the mixture, any total amount of the mixture of air contaminant compounds greater than or equal to 5,000 pounds; or

(iv) where natural gas excluding carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen or air emissions from crude oil are known to be in an amount greater than or equal to 5,000 pounds or the associated hydrogen sulfide and mercaptans in a total amount greater than 100 pounds, whichever occurs first;

(C) for opacity from boilers and combustion turbines as defined in this section fueled by natural gas, coal, lignite, wood, fuel oil containing hazardous air pollutants at a concentration of less than 0.02% by weight, opacity that is equal to or exceeds 15 additional percentage points above the applicable limit, averaged over a six-minute period. Opacity is the only RQ applicable to boilers and combustion turbines described in this paragraph; or

(D) for facilities where air contaminant compounds are measured directly by a continuous emission monitoring system providing updated readings at a minimum 15-minute interval an amount, approved by the executive director based on any relevant conditions and a screening model, that would be reported prior to ground level concentrations reaching at any distance beyond the closest regulated entity property line:

(i) less than one-half of any applicable ambient air standards; and

(ii) less than two times the concentration of applicable air emission limitations.

(89) [~~(90)~~] Rubbish--Nonputrescible solid waste, consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, metal furniture, and like materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(90) [~~(91)~~] Scheduled maintenance, startup, or shutdown activity--For activities with unauthorized emissions that are expected to exceed a reportable quantity (RQ), a scheduled maintenance, startup, or shutdown activity is an activity that the owner or operator of the reg-

ulated entity whether performing or otherwise affected by the activity, provides prior notice and a final report as required by §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements); the notice or final report includes the information required in §101.211 of this title; and the actual unauthorized emissions from the activity do not exceed the emissions estimates submitted in the initial notification by more than an RQ. For activities with unauthorized emissions that are not expected to, and do not, exceed an RQ, a scheduled maintenance, startup, or shutdown activity is one that is recorded as required by §101.211 of this title. Expected excess opacity events as described in §101.201(e) of this title (relating to Emissions Event Reporting and Recordkeeping Requirements) resulting from scheduled maintenance, startup, or shutdown activities are those that provide prior notice (if required), and are recorded and reported as required by §101.211 of this title.

(91) [~~(92)~~] Sludge--Any solid or semi-solid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant; water supply treatment plant, exclusive of the treated effluent from a wastewater treatment plant; or air pollution control equipment.

(92) [~~(93)~~] Smoke--Small gas-born particles resulting from incomplete combustion consisting predominately of carbon and other combustible material and present in sufficient quantity to be visible.

(93) [~~(94)~~] Solid waste--Garbage, rubbish, refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control equipment, and other discarded material, including solid, liquid, semisolid, or containerized gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under the Texas Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land, if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas, or geothermal resources, and other substance or material regulated by the Railroad Commission of Texas under Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by Resource Conservation and Recovery Act, as amended (42 United States Code, §§6901 *et seq.).*

(94) [~~(95)~~] Sour crude--A crude oil that will emit a sour gas when in equilibrium at atmospheric pressure.

(95) [~~(96)~~] Sour gas--Any natural gas containing more than 1.5 grains of hydrogen sulfide per 100 cubic feet, or more than 30 grains of total sulfur per 100 cubic feet.

(96) [~~(97)~~] Source--A point of origin of air contaminants, whether privately or publicly owned or operated. Upon request of a source owner, the executive director shall determine whether multiple processes emitting air contaminants from a single point of emission will be treated as a single source or as multiple sources.

(97) [~~(98)~~] Special waste from health care-related facilities--A solid waste that if improperly treated or handled, may serve to transmit infectious disease(s) and that is comprised of the following: animal waste, bulk blood and blood products, microbiological waste, pathological waste, and sharps.

(98) [~~(99)~~] Standard conditions--A condition at a temperature of 68 degrees Fahrenheit (20 degrees Centigrade) and a pressure of 14.7 pounds per square inch absolute (101.3 kiloPascals). [~~Pollutant concentrations from an incinerator will be corrected to a condition of 50% excess air if the incinerator is operating at greater than 50% excess air.~~]

(99) [~~(100)~~] Standard metropolitan statistical area--An area consisting of a county or one or more contiguous counties that is officially so designated by the United States Bureau of the Budget.

(100) [~~(101)~~] Submerged fill pipe--A fill pipe that extends from the top of a tank to have a maximum clearance of six inches (15.2 centimeters) from the bottom or, when applied to a tank that is loaded from the side, that has a discharge opening entirely submerged when the pipe used to withdraw liquid from the tank can no longer withdraw liquid in normal operation.

(101) [~~(102)~~] Sulfur compounds--All inorganic or organic chemicals having an atom or atoms of sulfur in their chemical structure.

(102) [~~(103)~~] Sulfuric acid mist/sulfuric acid--Emissions of sulfuric acid mist and sulfuric acid are considered to be the same air contaminant calculated as H_2SO_4 and must include sulfuric acid liquid mist, sulfur trioxide, and sulfuric acid vapor as measured by Test Method 8 in 40 Code of Federal Regulations Part 60, Appendix A.

(103) [~~(104)~~] Sweet crude oil and gas--Those crude petroleum hydrocarbons that are not "sour" as defined in this section.

(104) [~~(105)~~] Total suspended particulate--Particulate matter as measured by the method described in 40 Code of Federal Regulations Part 50, Appendix B.

(105) [~~(106)~~] Transfer efficiency--The amount of coating solids deposited onto the surface or a part of product divided by the total amount of coating solids delivered to the coating application system.

(106) [~~(107)~~] True vapor pressure--The absolute aggregate partial vapor pressure, measured in pounds per square inch absolute, of all volatile organic compounds at the temperature of storage, handling, or processing.

(107) [~~(108)~~] Unauthorized emissions--Emissions of any air contaminant except carbon dioxide, water, nitrogen, methane, ethane, noble gases, hydrogen, and oxygen that exceed any air emission limitation in a permit, rule, or order of the commission or as authorized by Texas Clean Air Act, §382.0518(g).

(108) [~~(109)~~] Unplanned maintenance, startup, or shutdown activity--For activities with unauthorized emissions that are expected to exceed a reportable quantity or with excess opacity, an unplanned maintenance, startup, or shutdown activity is:

(A) a startup or shutdown that was not part of normal or routine facility operations, is unpredictable as to timing, and is not the type of event normally authorized by permit; or

(B) a maintenance activity that arises from sudden and unforeseeable events beyond the control of the operator that requires the immediate corrective action to minimize or avoid an upset or malfunction.

(109) [~~(110)~~] Upset event--An [~~an~~] unplanned and unavoidable breakdown or excursion of a process or operation that

results in unauthorized emissions. A maintenance, startup, or shutdown activity that was reported under §101.211 of this title (relating to Scheduled Maintenance, Startup, and Shutdown Reporting and Recordkeeping Requirements), but had emissions that exceeded the reported amount by more than a reportable quantity due to an unplanned and unavoidable breakdown or excursion of a process or operation is an upset event.

(110) [~~(111)~~] Utility boiler--A boiler used to produce electric power, steam, or heated or cooled air, or other gases or fluids for sale.

(111) [~~(112)~~] Vapor combustor--A partially enclosed combustion device used to destroy volatile organic compounds by smokeless combustion without extracting energy in the form of process heat or steam. The combustion flame may be partially visible, but at no time does the device operate with an uncontrolled flame. Auxiliary fuel and/or a flame air control damping system that can operate at all times to control the air/fuel mixture to the combustor's flame zone, may be required to ensure smokeless combustion during operation.

(112) [~~(113)~~] Vapor-mounted seal--A primary seal mounted so there is an annular space underneath the seal. The annular vapor space is bounded by the bottom of the primary seal, the tank wall, the liquid surface, and the floating roof or cover.

(113) [~~(114)~~] Vent--Any duct, stack, chimney, flue, conduit, or other device used to conduct air contaminants into the atmosphere.

(114) [~~(115)~~] Visible emissions--Particulate or gaseous matter that can be detected by the human eye. The radiant energy from an open flame is not considered [~~to be~~] a visible emission under this definition.

(115) [~~(116)~~] Volatile organic compound--As defined in 40 Code of Federal Regulations §51.100(s), except §51.100(s)(2) - (4), as amended on November 29, 2004 (69 FR 69290).

(116) [~~(117)~~] Volatile organic compound (VOC) water separator--Any tank, box, sump, or other container in which any VOC, floating on or contained in water entering such tank, box, sump, or other container, is physically separated and removed from such water prior to outfall, drainage, or recovery of such water.

§101.23. Alternate Emission Reduction ("Bubble") Policy.

An owner or operator of any facility that is affected by any control requirement of Chapters 111, 112, 113, 115, and 117 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter; Control of Air Pollution from Sulfur Compounds; Standards of Performance for Hazardous Air Pollutants and for Designated Facilities and Pollutants; Control of Air Pollution from Volatile Organic Compounds; and Control of Air Pollution from Nitrogen Compounds) [~~TACB Regulations I, II, III, V, VII, and IX~~] adopted on or after March 30, 1979, may, prior to compliance with such requirement, request the executive director to approve control of emissions from an alternate facility or from alternate facilities located on the affected property and owned or operated by or under the control of the owner or operator of the affected facility in lieu of compliance with the requirement as prescribed in the regulation, provided the alternate proposed controls are not required by any Texas Commission on Environmental Quality (TCEQ) [~~TACB~~] rule, regulation, permit condition, commission [~~board~~] order, or court order. The executive director shall approve control of emissions from alternate facilities if the applicant demonstrates that the alternate controls will yield, by the date specified in the rule, emission reductions that are substantially equivalent to the emissions reductions which would otherwise be required in terms of their quantity, character, air quality impacts including health and welfare effects, and area affected. Facilities which receive the executive director's approval of an alternate emissions control plan will be deemed to have complied with the otherwise applicable TCEQ [~~TACB~~] rule. However, the executive director may, after notice and opportunity for public hearing, revoke the credit or authority for alternate controls if the executive director [~~he~~] determines that any of the prerequisites for approval of the alternate controls are no longer met or if further emission reductions are needed to meet the intent of the Texas Clean Air Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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30 TAC §101.22

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

STATUTORY AUTHORITY

The repealed section is proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The repealed section is also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air.

The repealed section implements THSC, §§382.002, 382.011, 382.012, and 382.017; and Senate Bill 784, 79th Legislature, 2005.

§101.22. Effective Date.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER H. EMISSIONS BANKING AND TRADING
DIVISION 1. EMISSION CREDIT BANKING AND TRADING

30 TAC §101.302, §101.306

STATUTORY AUTHORITY

The amended sections are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended sections are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. The amended sections are also proposed under THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; and §382.051 and §382.0518, concerning Permitting Authority of Commission and Preconstruction Permit, that authorize the commission to issue preconstruction and operating air permits. The amended sections are also proposed under 42 USC, §7410(a)(2)(A), that requires SIPs to include enforceable measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The amended sections implement THSC, §§382.002, 382.011, 382.012, and 382.017; and Senate Bill 784, 79th Legislature, 2005.

§101.302. General Provisions.

(a) - (c) (No change.)

(d) Protocol.

(1) All generators or users of emission credits shall use a protocol that has been submitted by the executive director to the EPA for approval, if existing for the applicable facility or mobile source, to measure and calculate baseline emissions. If the generator or user wishes to deviate from a protocol submitted by the executive director, EPA approval is required before the protocol can be used. Protocols must be used as follows.

(A) Facilities subject to the emission specifications under §§117.110, 117.210, 117.310, 117.410, 117.1010, 117.1110, 117.1210, 117.1310, 117.2010, 117.2110, or 117.3310 [~~§§117.106, 117.206, or 117.475~~] of this title (relating to Emission Specifications for Attainment Demonstration [~~Demonstrations~~]; Emission Specifications for Eight-Hour Attainment Demonstration; and Emission Specifications) shall quantify reductions in nitrogen oxide emissions using the testing and monitoring methodologies identified to show compliance with the emission specification.

(B) - (C) (No change.)

(2) - (3) (No change.)

(e) - (l) (No change.)

§101.306. Emission Credit Use.

(a) (No change.)

(b) Credit use calculation.

(1) - (2) (No change.)

(3) For emission credits used to comply with §§117.123, 117.223, 117.320, 117.323, 117.423, 117.1020, 117.1120, 117.1220, or 117.3123 [~~§§117.108, 117.210, or 117.223~~] of this title (relating to [~~System Cap; and~~] Source Cap; System Cap; and Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration Control Requirements), the number of emission credits needed for increasing the 30-day rolling average emission cap or maximum daily cap should be determined according to the following equation plus an additional 10% to be retired as an environmental contribution.
Figure: 30 TAC §101.306(b)(3)

(4) (No change.)

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 3. MASS EMISSIONS CAP AND TRADE PROGRAM

30 TAC §§101.350, 101.351, 101.353, 101.354, 101.360

STATUTORY AUTHORITY

The amended sections are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended sections are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of

the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. The amended sections are also proposed under THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; §382.016, concerning Monitoring Requirements, that authorizes the commission to prescribe reasonable requirements for the measuring and monitoring of air contaminant emissions; and §382.051 and §382.0518, concerning Permitting Authority of Commission and Preconstruction Permit, that authorize the commission to issue preconstruction and operating air permits. The amended sections are also proposed under 42 USC, §7410(a)(2)(A), that requires SIPs to include enforceable measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The amended sections implement THSC, §§382.002, 382.011, 382.012, and 382.017.

§101.350. Definitions.

The following words and terms, when used in this division, shall have the following meanings, unless the context clearly indicates otherwise.

(1) - (9) (No change.)

(10) Houston-Galveston-Brazoria (HGB) [~~Houston/Galveston (HGA)~~] ozone nonattainment area--As defined in §101.1 of this title (relating to Definitions).

(11) - (14) (No change.)

§101.351. Applicability.

(a) This division applies to all facilities which emit nitrogen oxides (NO_x) in the Houston- Galveston-Brazoria [~~Houston/Galveston~~] ozone nonattainment area, as defined in §101.1 of this title (relating to Definitions) which are subject to the emission specifications under §§117.310, 117.1210, or 117.2010 [~~§§117.106, 117.206, or 117.475~~] of this title (relating to Emission Specifications for Attainment Demonstration [~~Demonstrations~~] and Emission Specifications) and which are:

(1) located at a site which meets the definition of major source, as defined in §117.10 of this title (relating to Definitions); [~~,~~] or

(2) (No change.)

(b) (No change.)

§101.353. Allocation of Allowances.

(a) Allowances will be deposited into compliance accounts according to the following equation except as provided in subsection (b) or (h) of this section.
Figure: 30 TAC §101.353(a)

(b) - (h) (No change.)

§101.354. Allowance Deductions.

(a) Allowances will be deducted in tenths of a ton from a site's compliance account for a control period based upon the monitoring and testing protocols established in §§117.340, 117.1240, and 117.2035 [~~§§117.114, 117.214, and 117.479~~] of this title (relating to Continuous Demonstration of Compliance; and Monitoring and Testing Requirements [~~Emission Testing and Monitoring for the Houston/Galveston Attainment Demonstration; and Monitoring, Recordkeeping, and Reporting Requirements~~]).

(b) - (d) (No change.)

(e) Allowances shall be deducted from a site's compliance account in an amount equal to the nitrogen oxides (NO_x) emissions increases from facilities not subject to an emission specification under §117.310 or §117.2010 [~~§117.206 or §117.475~~] of this title (relating to Emission Specifications for Attainment Demonstration [~~Demonstrations~~]; and Emission Specifications) which result from changes made after December 31, 2000, to facilities subject to this division and §117.310(e)(3) [~~§117.206(h)(3)~~] or §117.2010(f) [~~§117.475(f)~~] of this title. Documentation detailing these increases in NO_x emissions shall be included with the submittal of the ECT-1 Form, Annual Compliance Report.

(f) - (g) (No change.)

§101.360. Level of Activity Certification.

(a) The owner or operator of any facility subject to this division shall certify, no later than June 30, 2001, its historical level of activity by submitting to the executive director a completed ECT-3 Form, Level of Activity Certification, along with any supporting information such as usage records, testing or monitoring data, emission factors, and production records as follows:

(1) - (2) (No change.)

(3) for new and modified facilities not in operation prior to January 1, 1997, that are subject to emission specifications under §§117.310, 117.1210, or 117.2010 [~~§§117.106, 117.206, or 117.475~~] of this title (relating to Emission Specifications for Attainment Demonstration [~~Demonstrations~~]; and Emission Specifications) that were first adopted after April 1, 2001, and either have submitted under Chapter 116 of this title an application which the executive director has determined to be administratively complete within 90 days of the effective date of this emission specification, or have qualified for a permit by rule under Chapter 106 of this title [~~(relating to Permits by Rule)~~] and have commenced construction within 90 days of the effective date of the emission specification, the level of activity authorized by the executive director.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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DIVISION 4. DISCRETE EMISSION CREDIT BANKING AND TRADING

30 TAC §101.372, §101.376

STATUTORY AUTHORITY

The amended sections are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code (THSC), §382.017,

concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended sections are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. The amended sections are also proposed under THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; and §382.051 and §382.0518, concerning Permitting Authority of Commission and Preconstruction Permit, that authorize the commission to issue preconstruction and operating air permits. The amended sections are also proposed under 42 USC, §7410(a)(2)(A), that requires SIPs to include enforceable measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The amended sections implement THSC, §§382.002, 382.011, 382.012, and 382.017; and Senate Bill 784, 79th Legislature, 2005.

§101.372. General Provisions.

(a) - (c) (No change.)

(d) Protocol.

(1) All generators or users of discrete emission credits must use a protocol which has been submitted by the executive director to the EPA for approval, if existing for the applicable facility or mobile source, to measure and calculate baseline emissions. If the generator or user wishes to deviate from a protocol submitted by the executive director, EPA approval is required before the protocol can be used. Protocols shall be used as follows.

(A) Facilities subject to the emission specifications under §§117.110, 117.210, 117.310, 117.410, 117.1010, 117.1110, 117.1210, 117.1310, 117.2010, 117.2110, or 117.3310 [~~§§117.106, 117.206, or 117.475~~] of this title (relating to Emission Specifications for Attainment Demonstration [~~Demonstrations~~]; Emission Specifications for Eight-Hour Attainment Demonstration; and Emission Specifications) shall quantify reductions in NO_x using the testing and monitoring methodologies identified to show compliance with the emission specification.

(B) Facilities subject to the requirements under §§115.112, 115.121, 115.122, 115.162, 115.211, 115.212, 115.352, 115.421, 115.541, or 115.542 of this title (relating to [~~Emission Specifications; and~~] Control Requirements and Emission Specifications) shall quantify VOC reductions using the testing and monitoring methodologies identified to show compliance with the emission specifications or the requirements.

(C) (No change.)

(2) - (3) (No change.)

(e) - (m) (No change.)

§101.376. Discrete Emission Credit Use.

(a) - (c) (No change.)

(d) Notice of intent to use.

(1) (No change.)

(2) DERC use calculation.

(A) To calculate the amount of discrete emission credits necessary to comply with §§117.123, 117.223, 117.320, 117.323, 117.423, 117.1020, 117.1120, 117.1220, 117.3020, or 117.3123 [~~§§117.108, 117.138, 117.210, or 117.223~~] of this title (relating to [~~System Cap; and~~] Source Cap; System Cap; and Dallas-Fort Worth Eight-Hour Ozone Attainment Demonstration Control Requirements), a user may use the equations listed in those sections, or the following equations.

(i) For the rolling average cap:

Figure: 30 TAC §101.376(d)(2)(A)(i)

(ii) For maximum daily cap:

Figure: 30 TAC §101.376(d)(2)(A)(ii)

(B) - (E) (No change.)

(3) - (5) (No change.)

(e) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0348

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DIVISION 5. SYSTEM CAP TRADING

30 TAC §101.383, §101.385

STATUTORY AUTHORITY

The amended sections are proposed under Texas Water Code, §5.103, concerning Rules, and §5.105, concerning General Policy, that authorize the commission to adopt rules necessary to carry out its powers and duties under the Texas Water Code; and under Texas Health and Safety Code (THSC), §382.017, concerning Rules, that authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act. The amended sections are also proposed under THSC, §382.002, concerning Policy and Purpose, that establishes the commission purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, concerning General Powers and Duties, that authorizes the commission to control the quality of the state's air; and §382.012, concerning State Air Control Plan, that authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air. The amended sections are also proposed under THSC, §382.014, concerning Emission Inventory, that authorizes the commission to require a person whose activities cause air contaminant emissions to submit information to enable the commission to develop an emissions inventory; and §382.051 and §382.0518, concerning Permitting Authority of Commission and Preconstruction Permit, that authorize the commission to issue preconstruction and

operating air permits. The amended sections are also proposed under 42 USC, §7410(a)(2)(A), that requires SIPs to include enforceable measures or techniques, including economic incentives such as fees, marketable permits, and auction of emission rights.

The amended sections implement THSC, §§382.002, 382.011, 382.012, and 382.017; and Senate Bill 784, 79th Legislature, 2005.

§101.383. General Provisions.

(a) (No change.)

(b) System cap limits for units within an electric power generating system as regulated under §117.3020 [~~§117.138~~] of this title (relating to System Cap) may be exceeded with surplus emission allowables obtained for that calendar year from another source owner or operator participating in a system cap.

(c) (No change.)

§101.385. Recordkeeping and Reporting.

(a) (No change.)

(b) The owner or operator of a source participating in a system cap limit for sources subject to §117.3020 [~~§117.138~~] of this title (relating to System Cap) shall submit to the executive director an annual report.

(1) - (3) (No change.)

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

Texas Parks and Wildlife Department (department) proposes amendments to §§53.2, 53.5, 53.6, 53.12, and 53.13, concerning License Fees and Boat and Motor Fees, and §53.60 concerning Stamps. The proposed amendments are part of an overall department initiative to reduce the number of types of licenses sold by the department. By combining or replacing certain licenses and license packages and eliminating others that are not popular, the department will reduce administrative costs and regulatory complexity while still offering a variety of licenses to meet the various types of recreational demand.

The proposed amendment to §53.2, concerning License Issuance Procedures, Fees, Possession and Exemption Rules, would add a new paragraph (4) to subsection (a) to stipulate that persons under the age of 17 are considered to be residents for the purposes of the chapter. Under Parks and Wildlife Code, §42.001, the commission is authorized to designate categories of individual as residents. The proposed amendment to subsection (b)(2) would alter the license possession requirements to acknowledge that, due to the implementation of the one-day fishing package (which includes the saltwater stamp), the stamp requirement is no longer universal.

The proposed amendment to §53.5, concerning Recreational Hunting Licenses, Stamps, and Tags, would rename the Special Resident Hunting License to the Senior Resident Hunting License, restrict its use to residents who are 65 years of age or older, and create an additional license that is limited to persons under the age of 17. Under current rule, the Special Resident Hunting License is available to residents over the age of 65 and any person under 17 years of age, regardless of residency status. The department wishes to be able to more accurately track demographic trends in purchasing and use, which makes it necessary to stratify the two age groups currently eligible to purchase the special resident license. The price of the licenses would remain unchanged.

The proposed amendment to §53.6, concerning Recreational Fishing Licenses, Stamps, and Tags, would allow persons who are legally blind to be eligible to purchase the Special Resident Fishing License. The proposed amendment also would create a Senior Resident Fishing License for residents who are 65 years of age or older; create a Resident One-Day All-Water Fishing License ($10 fee), a Nonresident One-Day All-Water Fishing License ($15 fee), rename the special license packages as senior license packages, and would implement a fee of $3 for the Bonus Red Drum Tag.

Under Parks and Wildlife Code, §46.004, the commission may establish a lower fee or waive the fee or license requirement for a resident who is blind as defined by Human Resources Code, §94.001. The department has always allowed legally blind persons to purchase a fishing license at a reduced cost; however, this has never been explicitly stated by rule. The proposed amendment would accomplish that. The One-Day All-Water license is intended to replace a variety of licenses. To that end, the proposed amendment to subsection (c) would also eliminate the following licenses: July and August Resident Fishing, Day Resident Fishing, and Day Nonresident Fishing; and the following license packages: July and August Resident Fishing (freshwater, saltwater, all water) and both the resident and nonresident "Day Plus" Fishing (freshwater, saltwater, all water). The implementation of a fee for the bonus red drum tag is necessary for the department to recoup the administrative cost of providing anglers with the opportunity to take a red drum in addition to the red drum allowed under a fishing license. The proposed amendment also would eliminate obsolete references to effective dates and make additional nonsubstantive changes to simplify and clarify the regulations.

The proposed amendment to §53.12, concerning Commercial Fishing Licenses and Tags, would eliminate both the Resident and Nonresident Commercial Fishing Boat License and create a single license for residents and nonresidents alike, which would be called the Commercial Fishing Boat License; and the new license would be required for any boat (resident or nonresident) used in taking aquatic products (except menhaden, oysters,

crabs, and shrimp) from state waters or unloading aquatic products in Texas taken from outside state waters for commercial purposes. By combining the two licenses, the department will reduce administrative costs by issuing one license instead of two. The fee for the license would be $25, which represents the value the license would have to be sold at in order for the department to realize revenue equivalent to current revenue from the sale of resident ($18) and nonresident ($72) licenses. The proposed amendment also would eliminate obsolete references to effective dates and make additional nonsubstantive changes to simplify and clarify the regulations.

The proposed amendment to §53.13, concerning Business Licenses and Permits (Fishing) renames the Resident Freshwater Fishing Guide license as the Freshwater Fishing Guide license, renames the Resident Fishing Guide license as the Resident All-Water Fishing Guide license, and renames the Nonresident Fishing Guide license as the Nonresident All-Water Fishing Guide license. The proposed amendment is nonsubstantive. The proposed amendment also would eliminate obsolete references to effective dates and make additional nonsubstantive changes to simplify and clarify the regulations.

The proposed amendment to §53.60, concerning Stamps, would create an exemption from the stamp requirements for purchasers of the Special Fishing License, Resident One-Day All-Water Fishing License, and the Nonresident One-Day All-Water Fishing License.

The amendments are necessary because the department has determined the proposed modifications will streamline the department licensing system, make the system simpler for license purchasers, and provide better use and harvest data from various user groups.

Paul Hammerschmidt, Coastal Fisheries Division Director of Strategic Planning, has determined that, for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of enforcing or administering the rules, as the proposed amendments are revenue neutral to the department and do not affect any other units of state or local government.

The proposed amendment to §53.12 would combine the resident and nonresident commercial fishing boat licenses ($18 and $72, respectively) into a single license with a fee of $25. The $25 fee for the new license was selected because it is the value that will yield approximately the same revenue as was realized from the combined sales of the resident and nonresident licenses in Fiscal Year 2006.

The proposed amendment to §53.6 would impose a $3 fee for a bonus red drum tag. The $3 fee was selected because it represents the value needed to recoup the department's administrative costs in providing the bonus tag. The department incurs a cost of $.76 per transaction involving the department's point-of-sale system, plus the administrative cost of processing, recording, and completing the transaction. The department issued 5,482 bonus red drum tags in Fiscal Year 2006 at an estimated cost of approximately $16,000. The implementation of the $3 fee is expected to result in approximately $16,446 of revenue in Fiscal Year 2007 and thereafter, based on 2006 sales.

Mr. Hammerschmidt has also determined that, for each of the first five years the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be the simplification of the department's licensing system, the enhancement of the department's ability to maintain current levels of service to its customers and constituents, and the continued ability of the department to adequately discharge its statutory obligations.

Most of the license and permit changes addressed in the proposed amendments constitute no changes in license fees and will have no direct impact on persons required to comply or to small or microbusinesses, except as follows.

The proposed amendment to §53.12, if adopted, will impose a direct cost on businesses. The proposed amendment would combine the resident and nonresident commercial fishing boat licenses ($18 and $72, respectively) into a single license with a fee of $25, which would be a $7 increase for commercial fishing boat license holders who are Texas residents. Some of the businesses affected will be small or microbusinesses; however, there is no difference in the cost of compliance between a large and small business as a result of the proposed amendments. Likewise, there is no disproportionate economic impact on small or microbusinesses.

The proposed amendment to §53.6, if adopted, would also impose a direct cost to persons required to comply and to small and microbusinesses. The proposed amendment would impose a $3 fee for a bonus red drum tag. Some of the businesses affected will be small or microbusinesses; however, there is no difference in the cost of compliance between a large and small business as a result of the proposed amendment. Likewise, there is no disproportionate economic impact on small or microbusinesses. TPWD is not aware of a performance-oriented, voluntary, or market-based approach that would substitute for the proposed amendment.

The department does not require persons who purchase licenses or permits to supply detailed information as to the nature or scope of any commercial enterprise in which the license or permit is to be used. The department does not believe, however, that there are many, if any, businesses employing more than 100 persons that will be affected by the proposed rules. Therefore, the department has used the cost-per-employee method for comparing the cost of compliance for small businesses to the cost of compliance for the largest businesses affected by the proposed rules.

For commercial fishing boat licenses, the proposed fee increase would impose a maximum per-employee cost ranging from $7 for a business employing one person to $.07 for a business employing 100 people. For microbusinesses, the maximum per-employee cost would range from $7 for one employee to $.35 for 20 employees. For large businesses, the minimum per-employee cost would be fractions of a dollar lower than the maximum cost of compliance for a small business. TPWD is not aware of a performance-oriented, voluntary, or market-based approach that would substitute for the proposed amendment.

For bonus red drum tags, the proposed fee increase would impose a maximum of $3 for a business employing one person to $.03 for a business employing 100 people. For microbusinesses, the maximum per-employee cost would range from $3 for one employee to $.15 for 20 employees. For large businesses, the minimum per-employee cost would be fractions of a dollar lower than the maximum cost of compliance for a small business. TPWD is not aware of a performance-oriented, voluntary, or market-based approach that would substitute for the proposed amendment.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022,

as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined in Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted by phone, written correspondence or e-mail to Paul Hammerschmidt (512) 389-4650 or Ms. Kim Dudish (512) 389-4675; Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; or 1-800-792-1112.

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §§53.2, 53.5, 53.6, 53.12, 53.13

The amendments are proposed under the authority of Parks and Wildlife Code, §42.012, which authorizes the commission to establish a lower hunting license fee or waive the fee or license requirement for a resident who is under 17 years old; §43.402, which authorizes the commission to exempt persons from the saltwater fishing stamp requirements; §43.802, which authorizes the commission to exempt persons from the freshwater fishing stamp requirements; §46.004, which authorizes the commission to establish fees for resident and non-resident fishing licenses and to establish a lower fee or waive the fee or license requirement for a resident who is blind as defined by Human Resources Code, §94.001; §46.0045, which authorizes the commission to establish fees for initial and duplicate tags; §46.005, which authorizes the commission to establish fees for temporary sportfishing licenses of all types; and §47.007, which authorizes the commission to establish a fee for a commercial fishing boat license.

The amendment affects Parks and Wildlife Code, Chapters 42, 43, 46, and 47.

§53.2. License Issuance Procedures, Fees, Possession, and Exemption Rules.

(a) Hunting license possession.

(1) - (2) (No change.)

(3) A person may hunt deer in this state without having a valid hunting license in immediate possession only if that person:

(A) (No change.)

(B) is lawfully hunting:

(i) - (iv) (No change.)

(v) by special antlerless permit issued by the U.S. Forest Service (USFS) for use on USFS lands that are part of the department's public hunting program. For the purposes of this chapter, any person under the age of 17 is a resident.

(b) Fishing license possession.

(1) (No change.)

(2) No person may catch and retain a red drum over 28 inches in length in the coastal waters of this state without having a valid fishing license, saltwater sportfishing stamp (if applicable), and red drum tag in immediate possession.

(c) - (e) (No change.)

§53.5. Recreational Hunting Licenses, Stamps, and Tags.

(a) Hunting licenses:

(1) (No change.)

(2) senior [~~special~~] resident hunting--$6. Valid for [~~residents under 17 years of age,~~] residents who are 65 years of age or older[~~, and nonresident hunters who are under 17 years of age~~] on the date of license purchase;

(3) youth hunting--$6. Valid for any person under 17 years of age on the date of license purchase;

(4) [~~(3)~~] replacement hunting--$10;

(5) [~~(4)~~] general nonresident hunting--$300;

(6) [~~(5)~~] nonresident special hunting--$125;

(7) [~~(6)~~] nonresident five-day special hunting--$45;

(8) [~~(7)~~] nonresident spring turkey hunting--$120; and

(9) [~~(8)~~] nonresident banded bird hunting--$25.

(b) (No change.)

§53.6. Recreational Fishing Licenses, Stamps, and Tags.

(a) The items listed in this subsection are sold only as part of a package. The price and terms of these items are as follows:

(1) (No change.)

(2) special resident fishing license (valid for residents who are legally blind as described in Parks and Wildlife Code, §46.004)--$6;

(3) senior resident fishing license (valid for residents who are 65 years of age or older on the date of license purchase)--$6;

(4) [~~(3)~~] "year-from-purchase" resident fishing license--$30. The "Year-from-purchase" resident fishing license is valid from the date of purchase through the end of the purchase month of the subsequent year; and[~~.~~]

[~~(4) July and August resident fishing license--$20. The July and August resident fishing license is valid from the first day of July through the last day of August for the license year of purchase.~~]

[~~(5) day resident fishing license--$6. The day resident license is valid within a license year for the specified days of the resident "day plus" package within which it is sold~~].

(5) [~~(6)~~] non-resident fishing license--$50.

[~~(7) day non-resident fishing license--$12. The day non-resident license is valid within a license year for the specified days of the non-resident "day plus" package within which it is sold.~~]

(b) (No change.)

(c) Fishing packages and licenses. The price of any fishing package shall be the sum of the price of the individual items included in the package.

(1) - (3) (No change.)

(4) senior [~~special~~] resident freshwater fishing package--$11. Package consists of a senior [~~special~~] resident fishing license and a freshwater fishing stamp;

(5) senior [~~special~~] resident saltwater fishing package--$16. Package consists of a senior [~~special~~] resident fishing license and a saltwater sportfishing stamp with a red drum tag;

(6) senior [~~special~~] resident "all water" fishing package--$21. Package consists of a senior [~~special~~] resident fishing license, a freshwater fishing stamp, and a saltwater sportfishing stamp with a red drum tag;

(7) (No change.)

[(8) July and August resident freshwater fishing package--$25. Package consists of a July and August resident fishing license and a freshwater fishing stamp.]

[(9) July and August resident saltwater fishing package--$30. Package consists of a July and August resident fishing license and a saltwater sportfishing stamp with a red drum tag.]

[(10) July and August resident "all water" fishing package--$35. Package consists of a July and August resident fishing license, a freshwater fishing stamp, and a saltwater sportfishing stamp with a red drum tag.]

[(11) resident freshwater fishing "day plus" package--$11 for the first day plus $4 for each additional consecutive day. Package consists of a day resident fishing license and a freshwater fishing stamp, valid for the number of days purchased. Any purchaser who has previously purchased this package within the license year may repurchase this package at $6 for the first day plus $4 for each additional consecutive day. The privileges of the stamp shall be extended to the holder for the term of the subsequent purchase of this package.]

[(12) resident saltwater fishing "day plus" package--$16 for the first day plus $4 for each additional consecutive day. Package consists of a day resident fishing license and a saltwater sportfishing stamp with a red drum tag, valid for the number of days purchased. Any purchaser who has previously purchased this package within the license year may repurchase this package at $6 for the first day plus $4 for each additional consecutive day. The privileges of the stamp shall be extended to the holder for the term of the subsequent purchase of this package.]

[(13) resident all water fishing "day plus" package--$21 for the first day plus $4 for each additional consecutive day. Package consists of a day resident fishing license, a freshwater fishing stamp, and a saltwater sportfishing stamp with a red drum tag, valid for the number of days purchased. Any purchaser who has previously purchased this package within the license year may repurchase this package at $6 for the first day plus $4 for each additional consecutive day. The privileges of the stamps shall be extended to the holder for the term of the subsequent purchase of this package.]

(8) resident one-day all-water fishing license--$10. One red drum tag shall be available at no additional charge with the purchase of the first one-day license only.

(9) [(14)] non-resident freshwater fishing package--$55. Package consists of a non-resident fishing license and a freshwater fish stamp.

(10) [(15)] non-resident saltwater fishing package--$60. Package consists of a non-resident fishing license and a saltwater sportfishing stamp with a red drum tag.

(11) [(16)] non-resident "all water" fishing package--$65. Package consists of a non-resident fishing license, a freshwater fishing stamp, and a saltwater sportfishing stamp with a red drum tag.

[(17) non-resident freshwater fishing "day plus" package--$17 for the first day plus $8 for each additional consecutive day. Package consists of a day non-resident fishing license and a freshwater fishing stamp, valid for the number of days purchased. Any purchaser who has previously purchased this package within the license year may repurchase this package at $12 for the first day plus $8 for each additional consecutive day. The privileges of the stamp shall be extended to the holder for the term of the subsequent purchase of this package.]

[(18) non-resident saltwater fishing "day plus" package--$22 for the first day plus $8 for each additional consecutive day. Package consists of a day non-resident fishing license and a saltwater sportfishing stamp with a red drum tag, valid for the number of days purchased. Any purchaser who has previously purchased this package within the license year may repurchase this package at $12 for the first day plus $8 for each additional consecutive day. The privileges of the stamp shall be extended to the holder for the term of the subsequent purchase of this package.]

[(19) non-resident all water fishing "day plus" package--$27 for the first day plus $8 for each additional consecutive day. Package consists of a day non-resident fishing license, a freshwater fishing stamp, and a saltwater sportfishing stamp with a red drum tag, valid for the number of days purchased. Any purchaser who has previously purchased this package within the license year may repurchase this package at $12 for the first day plus $8 for each additional consecutive day. The privileges of the stamp shall be extended to the holder for the term of the subsequent purchase of this package.]

(12) non-resident one-day all-water fishing license--$15. One red drum tag shall be available at no additional charge with the purchase of the first one-day license only.

(13) [(20)] Lake Texoma fishing license--$12. Holders of a valid Lake Texoma License are exempt from freshwater fishing stamp requirements solely for the purpose of fishing on Lake Texoma; and

(14) [(21)] replacement [Replacement] fishing package or license--$10.

(d) Fishing tags:

(1) (No change.)

(2) bonus red drum tag (provides a second red drum tag to persons that have previously received a red drum tag)--$3 [--$0 .Available only to anglers presenting a fully executed original or duplicate red drum tag, a valid fishing package or license and the required information];

(3) - (4) (No change.)

§53.12. Commercial Fishing Licenses and Tags.

(a) - (b) (No change.)

(c) General, finfish, menhaden, mussel, clam, and miscellaneous licenses.

(1) Licenses and permits.

(A) [resident] commercial fishing boat (required for any boat used in taking aquatic products (except menhaden, oysters, crabs and shrimp) from state waters or unloading aquatic products in Texas taken from outside state waters for commercial purposes)--$25 [--18];

(B) - (F) (No change.)

[(G) nonresident commercial fishing boat--$72;]

(G) [(H)] nonresident general commercial fisherman's--$180;

(H) [(I)] nonresident commercial mussel and clam fisherman's--$960;

(I) [(J)] nonresident shell buyer's--$1,800;

(J) [(K)] menhaden fish plant permit--$180;

(K) [(L)] mussel dredge fee--$36; and

(L) [(M)] permit to sell non-game fish--$60.

§53.13. Business License and Permits (Fishing).

(a) Licenses.

(1) - (8) (No change.)

(9) finfish import--$90; [~~and~~]

(10) freshwater[~~resident~~] fishing guide (required for residents or nonresidents who operate a boat for anything of value in transporting or accompanying anyone who is fishing in freshwater of this state)--$125

[~~(A) for use in both saltwater and freshwater--$200; and~~]

[~~(B) for use in frewshwater only--$125.~~]

(11) resident all-water [~~non-resident~~] fishing guide--$200; and [~~:~~]

[~~(A) for use in both saltwater and freshwater--$200. This fee is $1,000 for the license year beginning September 1, 2004 and thereafter.~~]

[~~(B) for use in freshwater only--$125.~~]

(12) non-resident all-water fishing guide--$1,000.

(b) - (c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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SUBCHAPTER B. STAMPS

31 TAC §53.60

The amendment is proposed under the authority of Parks and Wildlife Code, §43.402, which authorizes the commission to exempt persons from the saltwater fishing stamp requirements and §43.802, which authorizes the commission to exempt persons from the freshwater fishing stamp requirements.

The amendment affects Parks and Wildlife Code, Chapter 43.

§53.60. Stamps.

(a) - (d) (No change.)

(e) Stamp Exemptions.

(1) - (7) (No change.)

(8) Special fishing license holders are exempt from the requirements for acquisition and possession of the following stamps:

(A) saltwater sportfishing stamp; and

(B) freshwater fishing stamp.

(9) All one-day all-water fishing license holders are exempt from requirements for acquisition and possession of the following stamps:

(A) saltwater sportfishing stamp; and

(B) freshwater fishing stamp.

(f) - (i) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Texas Parks and Wildlife Department
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SUBCHAPTER A. FEES
DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.16

The Texas Parks and Wildlife Department (department) proposes an amendment to §53.16, concerning Vessel, Motor, and Marine Licensing Fees. The proposed amendment would eliminate the current fee of $2 to obtain a record of boat or motor ownership.

Under current rule, record information concerning ownership of a boat or motor is obtainable for a fee of $2 per record. The current fee was promulgated to allow the department to recoup the administrative expenses incurred in retrieving and verifying information; however, the introduction of the department's automated Boat Registration Information and Titling System (BRITS), has reduced the cost of accessing records to the extent that the fee is no longer necessary.

Ms. Frances Stiles, Assistant Director of Revenue, has determined that, for each of the first five years that the rule as proposed is in effect, there will be minimal fiscal implications to state government as a result of enforcing or administering the rule. Although the department has implemented an automated system that will handle the majority of the workload, there will be an occasional need to manually process a request for ownership records. The department will absorb such costs using existing personnel, resulting in no net cost to the state.

Ms. Stiles also has determined that, for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be economical access to records maintained by the department.

There will be no adverse economic effects on small businesses, microbusinesses, or persons required to comply with the amendment as proposed.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Frances Stiles, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4860 (e-mail: frances.stiles@tpwd.state.tx.us).

The amendments are proposed under the authority of Parks and Wildlife Code, §31.039, which authorizes the commission to promulgate rules to charge fee for access to ownership records and other records made or kept under Chapter 31.

The proposed amendment affects Parks and Wildlife Code, Chapter 31.

§53.16. Vessel, Motor, and Marine Licensing Fees.

(a) - (d) (No change.)

(e) Report fees:

~~[(1) current owner of record report for vessel or outboard motor--$2;]~~

(1) [~~(2)~~] certified history report of ownership for vessel or outboard motor--$10;

(2) [~~(3)~~] accident/water fatality report up to five pages in length--$5; and

(3) [~~(4)~~] accident/water fatality report over five pages in length--$10.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 12, 2007.

TRD-200700432
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: March 25, 2007
For further information, please call: (512) 389-4775

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 28. DNA, CODIS, FORENSIC ANALYSIS, AND CRIME LABORATORIES

SUBCHAPTER A. DEFINITIONS AND GENERAL CODIS PROVISIONS

37 TAC §§28.2, 28.4, 28.5, 28.7

The Texas Department of Public Safety proposes amendments to Subchapter A, §§28.2, 28.4, 28.5, and 28.7 concerning Definitions And General CODIS Provisions. Due to legislation from the 79th Regular Legislative Session in House Bill 1068, the statutes regarding regulation of DNA laboratories were revised, including the repeal of Texas Government Code, §411.0206 and revisions to Texas Government Code, §411.144. Based on the changes to the law, it is necessary to propose revisions and additional clarification of minimum applicable standards for forensic laboratories and other entities.

The amendments to §§28.2, 28.4, and 28.5 are necessary for general clarification of procedures and terminology. The amendment to §28.7 removes the term "restricted" which was deleted from the Government Code. Other non-substantive grammatical and terminology changes have also been made.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the amendments are in effect the public benefit anticipated as a result of enforcing the amended rules will be current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to the rules. Accordingly, the department is not required to complete a takings impact assessment regarding the rules.

Comments on the proposal may be submitted to D. Pat Johnson, Director, Crime Laboratory Service, MSC0460, Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; or by electronic mail at LabQA@txdps.state.tx.us. DPS will accept comments for 30 days after publication in the *Texas Register*. For further information, call D. Pat Johnson at (512) 424-2143.

The amendments are proposed pursuant to Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471, which states the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings.

Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471 are affected by this proposal.

§28.2. Voluntary Sample [~~or Specimen~~].

Any person may voluntarily submit a [~~blood~~] sample [~~or other specimen~~] to the director for the purpose of creating a DNA record under Subchapter B of this chapter.

§28.4. Sample Collection.

A criminal justice or law enforcement agency or DNA laboratory may not collect, and the director may not accept, a [~~blood~~] sample [~~or other specimen~~] taken from a person who is not deceased, whether submitted voluntarily or as required by this chapter, unless:

(1) a [~~the~~] blood sample is collected in a medically approved manner by:

(A) a physician, registered nurse, licensed vocational nurse, licensed clinical laboratory technologist; or

(B) another person who is trained to properly collect blood samples [~~or other specimens~~] and supervised by a licensed physician; or

(2) a sample [~~the specimen~~] other than [~~a~~] blood [~~sample~~] is collected in a manner approved by the director in a policy adopted under this chapter.

§28.5. Sample Submitted to Director.

A person who collects a [~~blood~~] sample [~~or other specimen~~] under Subchapter C, D, or G of this chapter shall send the sample [~~or specimen~~] to the director at the DPS Crime Laboratory Service.

§28.7. Communications.

(a) Information about this chapter is available at the following web site: http://www.txdps.state.tx.us.

(b) Except as provided by §28.99 of this title (relating to CODIS Communications) and §28.120 of this title (relating to [~~Restricted~~] DNA Communications), a forensic DNA laboratory or accredited laboratory shall communicate with the department or the director through the DPS Crime Laboratory Service at:

(1) telephone number: (512) 424-2105;

(2) fax number: (512) 424-5645;

(3) e-mail address: LABQA@txdps.state.tx.us;

(4) Post Office Box mailing address: Crime Laboratory Service, Attention Quality Assurance, MSC 0460, Texas Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; and

(5) physical mailing address: Crime Laboratory Service, QA MSC 0460, Texas Department of Public Safety, 5805 North Lamar Boulevard, Austin, Texas 78752-4422.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 6, 2007.

TRD-200700316
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: March 25, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER B. CODIS RESPONSIBILITIES OF THE DIRECTOR

37 TAC §§28.21 - 28.23, 28.26 - 28.31

The Texas Department of Public Safety proposes amendments to Subchapter B, §§28.21 - 28.23, 28.26, and 28.27; and new §§28.28 - 28.31, concerning CODIS Responsibilities of the Director. Due to legislation from the 79th Regular Legislative Session in House Bill 1068, the statutes regarding regulation of DNA laboratories were revised, including the repeal of Texas Government Code, §411.0206 and revisions to Texas Government Code, §411.144. Based on the changes to the law, it is necessary to propose revisions and additional clarification of minimum applicable standards for forensic laboratories and other entities.

The amendments to the sections are necessary in order for general clarification of procedures and terminology. In addition, §28.23 adds new paragraph (3) which describes another type of DNA record that may be contained in the DNA database. New §28.28 lists the provisions a sample must comply with in order to be in compliance with DPS provisions. New §28.29 regards reporting the existence of satisfactory DNA samples, when asked by a criminal justice agency. New §28.30 regards the administrative removal of a DNA record from the database. Current §28.28 is being simultaneously repealed in ordered to be filed as new §28.31.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the amendments and new sections are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the amendments and new sections are in effect the public benefit anticipated as a result of enforcing the proposal will be current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to the rules. Accordingly, the department is not required to complete a takings impact assessment regarding the rules.

Comments on the proposal may be submitted to D. Pat Johnson, Director, Crime Laboratory Service, MSC0460, Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; or by electronic mail at LabQA@txdps.state.tx.us. DPS will accept comments for 30 days after publication in the *Texas Register*. For further information, call D. Pat Johnson at (512) 424-2143.

The amendments and new sections are proposed pursuant to Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471, which states the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings.

Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471 are affected by this proposal.

§28.21. DNA Database Authority.

The director shall record DNA data and establish and maintain a computerized database that serves as the central depository in the state for criminal DNA records, including profiles. The director may maintain the DNA database at the DPS Crime Laboratory Service or another suitable location.

§28.22. DNA Database Purposes.

The director may receive, analyze, store, and destroy a record, profile, or [~~blood~~] sample[~~, or other specimen~~] for the following purposes:

(1) to assist a federal, state, or local criminal justice agency [~~or law enforcement agencies~~] in the investigation or prosecution of sex-related offenses or other offenses in which biological evidence is recovered;

(2) in criminal cases, for use in the investigation of an offense, the exclusion or identification of suspects or offenders, and the prosecution or defense of the case;

(3) to assist in the recovery or identification of human remains from a disaster or for humanitarian purposes;

(4) to assist in the identification of living or deceased missing persons; [~~and~~]

(5) if personal identifying information is removed:

(A) to establish a population statistics database; and

(B) to assist in identification research, forensic validation studies, or forensic [~~and~~] protocol development; [~~and~~]

(6) [~~(C)~~] retesting to validate or update the original analysis or to assist in database or DNA laboratory quality control.

§28.23. Types of DNA Files.

The DNA database may contain DNA records, including profiles, for the following types of records:

(1) an individual [~~adult~~] described by §28.41 of this title (relating to Sample Collection by TDCJ);

(2) a juvenile described by §28.61 of this title (relating to Sample Collection by TYC);

(3) an individual charged with, convicted of, or placed on deferred adjudication for certain offenses described in Subchapter G of this chapter;

(4) [~~(3)~~] a biological sample [~~specimen~~] of a deceased victim of a crime;

(5) [~~(4)~~] a biological sample [~~specimen~~] that is legally obtained in the investigation of a crime, regardless of origin;

(6) [~~(5)~~] an unidentified missing person, or unidentified skeletal remains or body parts;

(7) [~~(6)~~] a close biological relative of a person who has been reported missing to a law enforcement agency;

(8) [~~(7)~~] a person at risk of becoming lost, such as a child or a person declared by a court to be mentally incapacitated, if the record is required by court order or a parent, conservator, or guardian of the person consents to the record; or

(9) [~~(8)~~] an unidentified person, if the record does not contain personal identifying information.

§28.26. DNA Database.

(a) Capabilities. The DNA database must be capable of classifying, matching, and storing the profiles or other results of analyses of DNA [~~and other biological molecules~~].

(b) National standards. Standards for DNA analysis shall meet or exceed the current standards for quality assurance and proficiency testing for forensic DNA analysis issued by the FBI. The DNA database may contain only DNA records of DNA analyses, including profiles, performed according to the standards required by this chapter.

(c) Compatibility. The DNA database must be compatible with the national DNA index system (NDIS) procedures sponsored by the FBI to the extent required by the FBI to permit the useful exchange and storage of DNA records or information derived from those records, including profiles.

(d) FBI liaison. The director is the liaison for DNA data, records, profiles, evidence, and other related matters between the FBI and a DNA laboratory or a criminal justice or law enforcement agency.

§28.27. Sample [~~or Specimen~~] Collection Kits.

The director shall provide a reasonable quantity of [~~blood~~] sample collection kits to a criminal justice or law enforcement agency in this state, which is required by statute to collect offender samples, at no cost to the agency. A [~~blood~~] sample collection kit shall consist of any items necessary for sample collection including [~~specimen vials, mailing containers and labels, report forms~~], instructions [~~for collection of blood sample or other specimens~~], and any other item designated by the director. Agencies shall use the supplies contained in the kit, as directed in the instructions, unless otherwise approved by the director.

§28.28. Compliance with Collection Provisions.

In order for a sample to comply with DPS collection provisions, all of the following standards must be met:

(1) The sample shall have been collected pursuant to the following:

(A) proper statutory authority;

(B) court-order; or

(C) voluntary submission.

(2) The sample shall be collected with a collection kit approved and provided by the director.

(3) The sample shall be collected in accordance with the kit instructions.

(4) The sample documentation shall include fingerprints.

§28.29. Existence of Satisfactory Sample.

(a) Information shall be released to a criminal justice or law enforcement agency about whether or not a satisfactory DNA sample has been received.

(b) A formal request shall be provided and should contain: the offender's full name, date of birth, and Texas State Identification (SID) number.

(c) The information that may be released includes: if a sample has been received, the date of receipt, the submitting agency, and the verification status.

(d) The department shall maintain a record of requests under this section.

§28.30. Administrative Removal.

If a sample has been erroneously taken from an individual that is not required by statute to provide a sample, the agency collecting the sample shall provide a formal request to the director asking that the sample be destroyed. Prior to destruction, a check of the offender's criminal history will be conducted to verify that there are no qualifying offenses. If an individual is determined to have a qualifying offense, and a satisfactory sample has not been previously submitted, the agency will be notified that the sample is being retained. If there are no qualifying offenses, the sample and its associated records will be removed, and the collecting agency notified of the removal. Communications may be made as detailed in §28.99 of this title (relating to CODIS Communications).

§28.31. Court Order.

If any person subject to this chapter fails or refuses to comply with this chapter or with Government Code, Chapter 411, Subchapter G, the director may request a district or county attorney or the attorney general to seek compliance with the act through a court order.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 6, 2007.

TRD-200700317
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: March 25, 2007
For further information, please call: (512) 424-2135

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37 TAC §28.28

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes the repeal of Subchapter B, §28.28, concerning Court Order. The section is being repealed and simultaneously being filed as new §28.31. It is necessary to renumber the section due to the addition of other new sections to Subchapter B, concerning CODIS Responsibilities of the Director.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to D. Pat Johnson, Director, Crime Laboratory Service, MSC0460, Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; or by electronic mail at LabQA@txdps.state.tx.us. DPS will accept comments for 30 days after publication in the *Texas Register*. For further information, call D. Pat Johnson at (512) 424-2143.

The repeal is proposed pursuant to Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471, which states the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings.

Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471 are affected by this proposal.

§28.28. Court Order.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 6, 2007.

TRD-200700318
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: March 25, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER C. CODIS RESPONSIBILITIES OF THE TEXAS DEPARTMENT OF CRIMINAL JUSTICE

37 TAC §§28.41 - 28.47

The Texas Department of Public Safety proposes amendments to Subchapter C, §§28.41 - 28.45, and new §28.46 and §28.47, concerning CODIS Responsibilities of the the Institutional Division. Due to legislation from the 79th Regular Legislative Session in House Bill 1068, the statutes regarding regulation of DNA laboratories were revised, including the repeal of Texas Government Code, §411.0206 and revisions to Texas Government Code, §411.148. Based on the changes to the law, it is necessary to propose revisions and additional clarification of minimum applicable standards for forensic laboratories and other entities.

The amendments to the sections are necessary in order for general clarification of procedures and terminology, including changing the title of the subchapter and deleting stipulations of collection from certain individuals in §28.41 to accommodate the changes in §411.148 of the Government Code. In addition, current §§28.46 - 28.48 are being repealed with current §28.47 and §28.48 being simultaneously filed as new §28.46 and §28.47. Also, §28.45 is being amended to more effectively address collection of DNA samples from individuals in other institutions.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the amendments and new sections are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the amendments and new sections are in effect the public benefit anticipated as a result of enforcing the proposal will be current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to the rules. Accordingly, the department is not required to complete a takings impact assessment regarding the rules.

Comments on the proposal may be submitted to D. Pat Johnson, Director, Crime Laboratory Service, MSC0460, Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; or by electronic mail at LabQA@txdps.state.tx.us. DPS will accept comments for 30 days after publication in the *Texas Register*. For further information, call D. Pat Johnson at (512) 424-2143.

The amendments and new sections are proposed pursuant to Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471, which states the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings.

Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471 are affected by this proposal.

§28.41. Sample Collection by TDCJ.

[~~(a)~~] An individual confined in a penal institution operated by or under contract with the Texas Department of Criminal Justice [~~inmate of the institutional division~~] shall provide one or more DNA [~~blood~~] samples [~~or other specimens taken by or at the request of the institutional division~~] for the purpose of creating a DNA record. [~~if the inmate:~~]

[~~(1) is ordered by a court to give the sample or specimen; or~~]

[~~(2) is serving a sentence for a felony, unless due to insufficient funding the executive director of TDCJ has given priority only to certain serious offenders.~~]

[(b) An inmate, who entered the institutional division before April 1, 2004, and who has not provided a specimen under this subchapter, is covered by the law previously in effect.]

§28.42. TDCJ Responsibilities.

TDCJ shall:

(1) obtain samples [or other specimens] from individuals [inmates] under this subchapter;

(2) preserve each [blood] sample [or other specimen] collected;

(3) maintain a record of the collection of the sample [or specimen]; and

(4) send the sample [or specimen] to the director for scientific analysis under Subchapter B of this chapter.

§28.43. Sample Collection.

(a) Time to collect. TDCJ [The institutional division] shall obtain the sample [or specimen] from an individual [inmate of the institutional division] during the diagnostic process or at another time determined by TDCJ. [The division shall collect a blood sample from an inmate confined in the division who has completed the diagnostic process before February 1, 1996, not later than the 90th day before the inmate's earliest parole eligibility date.]

(b) Use of force. A TDCJ [An] employee [of the institutional division] may use force against an individual [inmate] required to provide a sample [or specimen] under this subchapter when and to the degree the employee reasonably believes the force is immediately necessary to collect [obtain] the sample [or specimen].

(c) Contracts. TDCJ may contract for phlebotomy services under this subchapter.

§28.44. Fingerprint and Signature.

(a) TDCJ [The institutional division] shall collect and forward thumbprints [a right thumbprint] with each DNA [blood] sample [or specimen] collected under this subchapter. [If the subject has no right thumb, the division shall collect and forward a left thumbprint or other fingerprint with an appropriate notation.]

(b) The thumbs [thumb or other finger] must be rolled to capture the entire print.

(c) TDCJ [The institutional division] shall provide a legible signature of the person collecting the sample [or specimen] and, for identification purposes, should make reasonable efforts to collect a legible signature from the subject providing the sample.

§28.45. Individual [Inmate] in Another Institution.

If an individual [inmate] is confined in another [a penal] institution after sentencing and before admission to TDCJ, and TDCJ determines that the individual is likely to be released before being admitted to TDCJ, TDCJ shall cause a sample to be collected from the individual [awaiting transfer to the institutional division for an offense described in §28.41 of this title (relating to Sample Collection by TDCJ), the institutional division shall obtain the sample or specimen from the inmate as soon as practicable after the Parole Division informs the institutional division that the inmate is likely to be paroled before being admitted to the institutional division]. The administrator of the other penal institution shall cooperate under this section as required by law.

§28.46. Advance Notice of Release.

TDCJ shall notify the director that an individual subject to this subchapter is to be released from custody not earlier than the 120th day before the individual's release date and not later than the 90th day before the individual's release date.

§28.47. Release without Sample.

If an individual is released without first having submitted a required sample, TDCJ shall file an appropriate report with the director. The director may then seek post-release compliance with this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 6, 2007.

TRD-200700319
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: March 25, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER C. CODIS RESPONSIBILITIES OF THE INSTITUTIONAL DIVISION

37 TAC §§28.46 - 28.48

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes the repeal of Subchapter C, §§28.46 - 28.48, concerning CODIS Responsibilities of the Institutional Division. Section 28.46 is being completely repealed, while §28.47 and §28.48 are being repealed and simultaneously filed as new §28.46 and §28.47.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to the rules. Accordingly, the department is not required to complete a takings impact assessment regarding the rules.

Comments on the proposal may be submitted to D. Pat Johnson, Director, Crime Laboratory Service, MSC0460, Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; or by electronic mail at LabQA@txdps.state.tx.us. DPS will accept comments for 30 days after publication in the *Texas Register*. For further information, call D. Pat Johnson at (512) 424-2143.

The repeal is proposed pursuant to Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471, which states the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings.

Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471 are affected by this proposal.

§28.46. Release Date and Administrative Action.

§28.47. Advance Notice of Release.

§28.48. Release without Sample.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 6, 2007.

TRD-200700320
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: March 25, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER D. CODIS RESPONSIBILITIES OF THE TEXAS YOUTH COMMISSION

37 TAC §§28.61 - 28.67

The Texas Department of Public Safety proposes amendments to Subchapter D, §§28.61 - 28.64, and new §§28.65 - 28.67, concerning CODIS Responsibilities of the Texas Youth Commission. Due to legislation from the 79th Regular Legislative Session in House Bill 1068, the statutes regarding regulation of DNA laboratories were revised, including the repeal of Texas Government Code, §411.0206 and revisions to Texas Government Code, §411.148. Based on the changes to the law, it is necessary to propose revisions and additional clarification of minimum applicable standards for forensic laboratories and other entities.

The amendments to the sections are necessary in order for general clarification of procedures and terminology, including deleting the list of offenses which require sample collection from §28.61 as it is now located in Subchapter G, and replacing that language with the new language in §411.148 of the Government Code; adding new §28.65 regarding collection of a DNA sample and administrative action with a juvenile in another institution and adding new §28.66 regarding advance notice of release. Current §28.65 and §28.66 are being repealed simultaneously with this proposal. Repealed §28.66 will be filed as new §28.67.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the amendments and new sections are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the amendments and new sections are in effect the public benefit anticipated as a result of enforcing the proposal will be current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to the rules. Accordingly, the department is not required to complete a takings impact assessment regarding the rules.

Comments on the proposal may be submitted to D. Pat Johnson, Director, Crime Laboratory Service, MSC0460, Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; or by electronic mail at LabQA@txdps.state.tx.us. DPS will accept comments for 30 days after publication in the *Texas Register*. For further information, call D. Pat Johnson at (512) 424-2143.

The amendments and new sections are proposed pursuant to Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471, which states the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings.

Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471 are affected by this proposal.

§28.61. Sample Collection by TYC.

[~~(a)~~] A juvenile who is, after an adjudication for conduct constituting a felony, confined in a facility operated by or under contract with [~~committed to~~] TYC shall provide one or more DNA [~~blood~~] samples [~~or other specimens~~] taken by or at the request of the commission for the purpose of creating a DNA record. [~~if the juvenile has not already provided the required specimen under other state law and if the juvenile is ordered by a juvenile court to give the sample or specimen or is committed to the commission for an adjudication as having engaged in delinquent conduct that violates:~~]

[~~(1) an offense:~~]

[~~(A) under Penal Code, §19.02, (murder);~~]

[~~(B) under Penal Code, §19.03, (capital murder);~~]

[~~(C) under Penal Code, §22.02, (aggravated assault);~~]

[~~(D) an offense under Penal Code, §30.02, (burglary), if the offense is punishable under subsection (c)(2) or (d) of that section; or~~]

[~~(E) for which the juvenile is required to register as a sex offender under Code of Criminal Procedure, Chapter 62; or~~]

[~~(2) a penal law if the juvenile has previously been convicted of or adjudicated as having engaged in:~~]

[~~(A) a violation of a penal law described in paragraph (1) of this subsection; or~~]

[~~(B) a violation of a penal law under federal law or the laws of another state that involves the same conduct as a violation of a penal law described in paragraph (1) of this subsection.~~]

[~~(b) A juvenile, who entered TYC before April 1, 2004, and who has not provided a specimen under this subchapter, is covered by the law previously in effect.~~]

§28.62. TYC Responsibilities.

TYC shall:

(1) obtain samples [~~or other specimens~~] from juveniles under this subchapter;

(2) preserve each [~~blood~~] sample [~~or other specimen~~] collected;

(3) maintain a record of the collection of the sample [~~or specimen~~]; and

(4) send the sample [~~or specimen~~] to the director for scientific analysis under Subchapter B of this chapter.

§28.63. Sample Collection.

(a) Time to collect. TYC shall obtain the sample [~~or specimen~~] from a juvenile during the initial examination or at another time determined by TYC. [~~TYC shall collect a sample or specimen from a juvenile who has completed the initial examination before January 1,~~

~~2005, not later than the 90th day before the juvenile's earliest parole eligibility date.~~]

(b) Use of force. A TYC employee may use force against a juvenile required to provide a sample [~~or specimen~~] under this subchapter when and to the degree the employee reasonably believes the force is immediately necessary to collect [~~obtain~~] the sample [~~or specimen~~].

(c) Contracts. TYC may contract for phlebotomy services under this subchapter.

§28.64. Collection of Fingerprint and Signature.

(a) TYC shall collect and forward thumbprints [~~a right thumbprint~~] with each DNA [~~blood~~] sample [~~or specimen~~] collected under this subchapter. [~~If the subject has no right thumb, TYC shall collect and forward a left thumbprint or other fingerprint with an appropriate notation.~~]

(b) The thumbs [~~thumb or other finger~~] must be rolled to capture the entire print.

(c) TYC shall provide a legible signature of the person collecting the sample [~~or specimen~~] and, for identification purposes, should make reasonable efforts to collect a legible signature from the subject providing the sample.

§28.65. Juvenile in Another Institution.

If a juvenile is confined in another juvenile detention facility after adjudication and before admission to TYC, and TYC determines that the juvenile is likely to be released before being admitted to TYC, TYC shall cause a sample to be collected from the juvenile. The administrator of the other juvenile detention facility shall cooperate fully with TYC as necessary to allow TYC to perform its duties under this subchapter.

§28.66. Advance Notice of Release.

TYC shall notify the director that a juvenile subject to this subchapter is to be released from custody not earlier than the 120th day before the juvenile's release date.

§28.67. Release without Required Sample.

If a juvenile is released without first having submitted a required sample, TYC shall file an appropriate report with the director. The director may seek post-release compliance with this subchapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

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37 TAC §28.65, §28.66

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes the repeal of Subchapter D, §28.65 and §28.66, concerning CODIS Responsibilities of the Texas Youth Commission. Section 28.65 is being completely repealed, while §28.66 is being repealed and simultaneously filed as new §28.67.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to the rules. Accordingly, the department is not required to complete a takings impact assessment regarding the rules.

Comments on the proposal may be submitted to D. Pat Johnson, Director, Crime Laboratory Service, MSC0460, Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; or by electronic mail at LabQA@txdps.state.tx.us. DPS will accept comments for 30 days after publication in the *Texas Register*. For further information, call D. Pat Johnson at (512) 424-2143.

The repeal is proposed pursuant to Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471, which states the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings.

Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471 are affected by this proposal.

§28.65. Release Date and Administrative Action.

§28.66. Release without Required Sample.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER E. FORENSIC DNA LABORATORIES

37 TAC §28.81, §28.82

The Texas Department of Public Safety proposes amendments to Subchapter E, §28.81 and §28.82, concerning Forensic DNA Laboratories. Due to legislation from the 79th Regular Legislative Session in HB 1068, the statutes regarding regulation of DNA laboratories were revised, including the repeal of Texas Government Code, §411.0206 and revisions to Texas Government Code, §411.144. Based on the changes to the law, it is necessary to propose revisions and additional clarification of mini-

mum applicable standards for forensic laboratories and other entities.

The amendments to §28.81 and §28.82 are necessary in order for general clarification of procedures and terminology.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to D. Pat Johnson, Director, Crime Laboratory Service, MSC0460, Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; or by electronic mail at LabQA@txdps.state.tx.us. DPS will accept comments for 30 days after publication in the *Texas Register*. For further information, call D. Pat Johnson at (512) 424-2143.

The amendments are proposed pursuant to Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471, which states the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings.

Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471 are affected by this proposal.

§28.81. Purpose and Applicability.

(a) This subchapter contains the director's rules [~~adopted under Government Code, §411.0206,~~] that govern the regulation of [~~a non-CODIS, forensic~~] DNA laboratories [~~laboratory~~] located in this state.

(b) The rules contained in this subchapter apply to [~~a~~] forensic DNA laboratories, including a CODIS user laboratory, [~~laboratory~~] and do not apply to:

[~~(1) a CODIS user laboratory;~~]

(1) [~~(2)~~] any laboratory, including a crime laboratory, which does not conduct DNA testing; or

(2) [~~(3)~~] any entity that conducts DNA testing, if that testing is performed for a purpose other than forensic analysis under Code of Criminal Procedure, Article 38.35.

§28.82. Minimum Standards.

(a) (No change.)

(b) Before conducting a DNA test, a forensic DNA laboratory shall:

(1) obtain DPS accreditation under Subchapter H of this chapter; and or

(2) comply with the audit standards required by the laboratory's recognized accrediting body [~~second-sample provision described in Code of Criminal Procedure, Article 38.35(e)~~].

[~~(c) A forensic DNA laboratory shall comply with the audit standards required by:~~]

[~~(1) Subchapter H of this chapter; and~~]

[~~(2) the laboratory's recognized accrediting body.~~]

[~~(d) No later than 30 days after the date the laboratory receives an audit report from its recognized accrediting body, a forensic DNA laboratory shall submit to the director a copy of the report along with its response to the audit. The response shall demonstrate:~~]

[~~(1) that each finding of substantial deficiency has been corrected or adequately addressed; or~~]

[~~(2) good cause for the director to waive each finding of substantial deficiency.~~]

(c) [~~(e)~~] A forensic DNA laboratory shall establish and maintain a procedure that requires prompt reporting of each substantial deficiency by the laboratory. Laboratory personnel shall promptly report an incident of substantial deficiency by the laboratory to appropriate authorities, including the laboratory's director, the director of the department, the laboratory's recognized accrediting body, and the appropriate prosecutor or other criminal justice or law enforcement agency. This section does not apply to a deficiency that laboratory personnel reasonably believe to be minor and not substantial.

(d) [~~(f)~~] If a forensic DNA laboratory agrees or is required to report the results of an analysis, comparison, or other match to a criminal justice or law enforcement agency, the laboratory shall make reasonable efforts to submit the report to the agency no later than 30 days after completing its report of the comparison or match.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER F. CODIS USER LABORATORIES

37 TAC §§28.91 - 28.98

The Texas Department of Public Safety proposes amendments to Subchapter F, §§28.91 - 28.93, and new §§28.94 - 28.98, concerning CODIS User Laboratories. Due to legislation from the 79th Regular Legislative Session in HB 1068, the statutes regarding regulation of DNA laboratories were revised, including the repeal of Texas Government Code, §411.0206 and revisions to Texas Government Code, §411.144. Based on the changes to the law, it is necessary to propose revisions and additional clarification of minimum applicable standards for forensic laboratories and other entities.

The amendments to §§28.91 - 28.93 are necessary in order for the general clarification of procedures and terminology. Current §28.94 is deleted as the audit provisions were added to §28.93. The remaining provisions are proposed new, having been renumbered accordingly. New §28.98 regards prohibitions of CODIS user lab activity.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to D. Pat Johnson, Director, Crime Laboratory Service, MSC0460, Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; or by electronic mail at LabQA@txdps.state.tx.us. DPS will accept comments for 30 days after publication in the *Texas Register*. For further information, call D. Pat Johnson at (512) 424-2143.

The amendments are proposed pursuant to Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471, which states the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings.

Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471 are affected by this proposal.

§28.91. Purpose and Applicability.

(a) This subchapter contains the director's rules [~~adopted under Government Code, Chapter 411, Subchapter G,~~] that govern the regulation of a CODIS user laboratory located in this state.

(b) (No change.)

§28.92. CODIS Laboratory Application.

A DNA laboratory in this state that is maintained by a criminal justice agency may apply to become a CODIS user laboratory by completing an application form provided by the director and providing requested information.

§28.93. Policy, Procedure, and Rule Compliance.

A CODIS user laboratory shall:

(1) (No change.)

(2) follow the procedures established by the director under this chapter and specified by the FBI, including the use of comparable test procedures, profiles, laboratory equipment, supplies and computer software; [~~and~~]

(3) maintain accreditation under Subchapter H of this chapter; and[~~,~~]

(4) be subject to the provision of the annual audit described by the *FBI DNA Quality Assurance Audit Document*. The laboratory shall submit to the director a copy of the audit report along with its response to the audit no later than 30 days after the date a laboratory either receives or completes an audit report.

§28.94. Entry and Inspection.

The director may enter and inspect a CODIS user laboratory during reasonable business hours and to monitor operations related to:

(1) the collection, preservation, shipment, and analysis of samples;

(2) the access and use of the DNA database; and

(3) any other matters including compliance with FBI guidelines.

§28.95. CODIS Records and Reports.

(a) A CODIS user laboratory conducting a DNA analysis under this subchapter shall transmit the DNA record of the analysis, including profiles, to the director at the DPS Crime Laboratory Service.

(b) If a CODIS user laboratory agrees or is required to report the results of an analysis, comparison, or other match to a criminal justice or law enforcement agency, the laboratory shall make reasonable efforts to submit the report to the agency no later than 30 days after completing its report of the comparison or match.

§28.96. Analysis of CODIS Sample.

A CODIS user laboratory may analyze a biological sample collected under this chapter or other DNA sample only:

(1) to type the genetic markers contained in the sample;

(2) for criminal justice and law enforcement purposes; or

(3) for other purposes described by this subchapter or a purpose described by §28.22 of this title (relating to DNA Database Purposes).

§28.97. Second Sample for Trial.

Because the convicted offender CODIS sample and its analysis are intended only to point to a suspect, if possible a second DNA sample must be obtained from a suspect in a criminal investigation if forensic DNA evidence is necessary for use as substantive evidence in the prosecution of a case.

§28.98. Prohibition of CODIS User Laboratory Activity.

If a CODIS user laboratory violates this subchapter, the director may prohibit the laboratory from:

(1) exchanging DNA records with another DNA laboratory or criminal justice or law enforcement agency; or

(2) accessing the CODIS system.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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37 TAC §§28.94 - 28.98

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes the repeal of §§28.94 - 28.98, concerning CODIS User Laboratories. Section 28.94 is being completely repealed, while §§28.95 - 28.98 are being repealed and simultaneously filed as new §§28.94 - 28.97.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to the rules. Accordingly, the department is not required to complete a takings impact assessment regarding the rules.

Comments on the proposal may be submitted to D. Pat Johnson, Director, Crime Laboratory Service, MSC0460, Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; or by electronic mail at LabQA@txdps.state.tx.us. DPS will accept comments for 30 days after publication in the *Texas Register.* For further information, call D. Pat Johnson at (512) 424-2143.

The repeal is proposed pursuant to Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471, which states the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings.

Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471 are affected by this proposal.

§28.94. Annual Audit.
§28.95. Entry and Inspection.
§28.96. CODIS Records and Reports.
§28.97. Analysis of CODIS Sample.
§28.98. Second Sample for Trial.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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SUBCHAPTER G. DATABASE RECORDS

37 TAC §§28.111 - 28.120

The Texas Department of Public Safety proposes amendments to Subchapter G, §§28.111 - 28.120, concerning DNA Database Records. Due to legislation from the 79th Regular Legislative Session in HB 1068, the statutes regarding regulation of DNA laboratories were revised, including the repeal of Texas Government Code, §411.0206 and revisions to Texas Government Code, §411.148. Based on the changes to the law, it is necessary to propose revisions and additional clarification of minimum applicable standards for forensic laboratories and other entities. Amendments to Subchapter G change the title of the subchapter. In addition, further amendments are necessary in order to clarify procedures for the collection of additional samples, and to delete information concerning a restricted DNA database, restricted DNA specimen, record segregation by agency, and record segregation by DPS and regarding access. The list of eligible individuals in §28.113 was amended to coincide with changes in §411.148 of the Government Code and Chapter 62, Code of Criminal Procedure. In addition, portions of §28.118 regarding additional DNA samples were deleted to simplify the rules.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the amendments are in effect the public benefit anticipated as a result of enforcing the amended rules will be current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to the rules. Accordingly, the department is not required to complete a takings impact assessment regarding the rules.

Comments on the proposal may be submitted to D. Pat Johnson, Director, Crime Laboratory Service, MSC0460, Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; or by electronic mail at LabQA@txdps.state.tx.us. DPS will accept comments for 30 days after publication in the *Texas Register.* For further information, call D. Pat Johnson at (512) 424-2143.

The amendments are proposed pursuant to Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471, which states the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings.

Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471 are affected by this proposal.

§28.111. Subchapter Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Approved laboratory or lab--means a public or private forensic laboratory that is approved by the director under this subchapter. The term does not include the department's crime laboratory service.

(2) (No change.)

~~[(3) Restricted DNA database--means the database that contains forensic DNA records maintained by the director of a specimen taken from a suspect, defendant, probationer, or convict under:]~~

~~[(A) Government Code, §411.1471 (DNA Records of Persons Charged With or Convicted of Certain Felonies);]~~

~~[(B) Government Code, §411.1472 (DNA Records of Persons Placed on Community Supervision for Certain Offenses); or]~~

~~[(C) Code of Criminal Procedure, Article 17.47 (Conditions Requiring Submission of a Specimen).]~~

(3) [~~(4)~~] [~~Restricted~~] DNA Database Card--means a form (LAB-13 [~~LAB-13R~~]) available from the director to be used by an agency to make a record under this subchapter.

(4) [~~(5)~~] [~~Restricted~~] DNA Procedural Guidelines--means the latest draft of the director's publication by that name [~~(Form LAB-11)~~] and any cross-referenced material, including a procedure or specimen collection method approved by the director.

~~[(6) Restricted DNA record--means any type of record of a restricted DNA specimen, including its profile.]~~

~~[(7) Restricted DNA specimen or restricted specimen--means a DNA sample or specimen, normally a buccal swab, taken under this subchapter. The term does not include:]~~

~~[(A) a blood sample; or]~~

~~[(B) a standard DNA specimen.]~~

(5) [~~(8)~~] Standard DNA sample [~~specimen or standard specimen~~]--means a DNA sample [~~or specimen~~], normally a blood sample, taken under Subchapters A through F of this chapter, including a standard sex offender DNA sample [~~specimen~~].

§28.112. Purpose and Applicability.

(a) Purpose. This subchapter contains the director's rules governing the taking of a biological sample [~~specimen~~] from certain eligible individuals by an agency in order to populate the DPS [~~restricted~~] DNA database.

(b) Applicability. The general law and rules governing CODIS apply to this subchapter except as otherwise provided by this subchapter.

(1) This subchapter applies to a [~~restricted~~] DNA sample [~~specimen~~] taken from an eligible individual for an offense covered by this subchapter.

(2) This subchapter does not apply to:

(A) a standard DNA sample [~~specimen~~] or record maintained by the director under Subchapters A through F of this chapter; or

(B) a [~~standard~~] suspect reference sample [~~specimen~~] that is not a voluntary sample [~~restricted specimen~~] described by §28.113(7) of this title (relating to Eligible Individual).

§28.113. Eligible Individual.

This subchapter applies to an eligible individual described in this section, including an individual who is:

(1) - (4) (No change.)

~~[(5) placed on community supervision, including deferred adjudication community supervision, for a felony described by paragraph (1) of this section;]~~

(5) [~~(6)~~] released on bail or bond under Code of Criminal Procedure, Article 17.47 [~~(Conditions Requiring Submission of a Specimen), for an offense described by this section~~]; [~~or~~]

(6) required to register under Chapter 62 Code of Criminal Procedure, who is not otherwise required to provide a standard sample; or

(7) described by paragraph (1), (2), or (4) of this section and who voluntarily provides a sample [~~specimen~~] to create a [~~restricted~~] DNA record under this subchapter.

§28.114. Approval of Outside Laboratory.

(a) Date of approval. A laboratory outside the department must:

(1) be approved on the date a [~~restricted~~] DNA sample [~~specimen~~] is analyzed by the lab; and

(2) remain approved at least until the date the analysis report is submitted by the lab to the director.

(b) Manner. An agency or other entity seeking approval for a lab under this section must submit to the director a written justification for the approval as described in the [~~*Restricted* ~~] *DNA Procedural Guidelines.* The laboratory must be accredited under Subchapter H of this chapter.

§28.115. Collection of Sample [~~Specimen~~].

(a) Generally. An agency may collect a [~~restricted~~] DNA sample [~~specimen~~] from an eligible individual. The agency collecting the sample [~~specimen~~] shall use a collection method approved by the director and described in the [~~*Restricted*~~] *DNA Procedural Guidelines* and may:

(1) only use a sample [~~specimen~~] collection kit obtained [~~purchased~~] from [~~or approved by~~] the director; and

(2) not collect the sample [~~specimen~~] using a trusty, probationer, volunteer, or other individual who is not officially associated with the agency.

(b) Evidentiary sample [~~specimen~~] discouraged. The [~~In the same manner as a standard specimen, the~~] director does not intend for a [~~restricted~~] DNA sample [~~specimen~~] to be used in court as the evidentiary sample [~~specimen~~] establishing identity. An agency should use information about matching the database sample's [~~restricted specimen's~~] profile to an unknown profile to obtain a separate evidentiary sample [~~specimen~~].

(c) Collection kit. For the purpose of collecting a DNA sample under this subchapter the [~~The~~] director shall make reasonable efforts to provide an adequate supply of sample [~~specimen~~] kits to each sheriff's department operating a county jail and, upon request, to any other agency with appropriately trained personnel.

(d) Training. The director may provide or approve training under this subchapter as described in the [~~*Restricted*~~] *DNA Procedural Guidelines.* If an agency frequently submits unusable samples [~~specimens~~], the director may require additional training before accepting further samples [~~specimens~~].

(e) Statutory prohibition. Under Government Code, §411.1471(d) [~~and §411.1472(c)~~], no agency may take a blood sample for the purpose of creating a [~~restricted~~] DNA record under this subchapter.

(f) Court-ordered sample [~~specimen~~]. If a court, including a magistrate, orders the taking of a [~~restricted~~] DNA sample [~~specimen~~] under this subchapter, the director encourages but does not require the court to order that the sample be [~~specimen~~] taken by an agency that has the personnel, training, and other resources necessary to efficiently and properly take the sample [~~specimen~~]. The director expects these personnel will normally be:

(1) a booking clerk or another individual performing a similar function at a county jail; or

(2) a member of a sex offender registration unit or another individual performing a similar function for the agency.

(g) Criminal history check. If an agency arrests an individual for a felony offense potentially covered by this subchapter, the director encourages but does not require the agency to take reasonable steps to determine if the individual has the criminal history sufficient to take a DNA sample [~~restricted specimen~~] under this subchapter. These steps

should include inquiry into each appropriate information system available to law enforcement.

[(h) Duty--restricted specimen. The duty to require or take a restricted specimen is not affected by the fact that:]

[(1) an individual asserts or proves that a standard specimen has already been collected; or]

[(2) a standard profile appears to already exist for the individual.]

(h) [(i)] Duty--standard sample [specimen]. The duty to require or take a standard sample [specimen]:

(1) is affected by the fact that an individual proves that a DNA sample [restricted specimen] has already been collected under this subchapter; and

(2) is not affected by the fact that:

(A) an individual asserts or proves that a standard specimen has already been collected; or

(B) a standard profile appears to already exist for the individual.

§28.116. Processing of Sample [Specimen].

(a) Preservation. The agency collecting the DNA sample [restricted specimen] shall use a preservation method and procedure approved by the director and described in the [*Restricted*] *DNA Procedural Guidelines*.

[(b) Restricted DNA Database Card. The individual agency representative who collects the specimen shall complete the card in a manner approved by the director and described in the *Restricted DNA Procedural Guidelines*.]

(b) [(c)] Forwarding. The collecting agency shall forward the sample [specimen] together with the original [Restricted] DNA Database Card to the director or an approved lab no later than the end of the third business day after the collection.

(c) [(d)] After forwarding. If the collecting agency forwards the sample [specimen] kit and its associated database card to an approved lab, the agency:

(1) may request the lab to return a copy of the profile to the agency; and

(2) must instruct the lab that the lab shall, as soon as is reasonably practicable after creating the profile, forward to the director:

(A) the profile;

(B) all remaining sample [specimen] material, including the unprocessed buccal swab and any remaining extracted DNA, and

(C) all other original kit components, including the original database card.

(d) [(e)] Acceptance or rejection. The director:

(1) may accept a usable sample [specimen] that substantially complies with this subchapter;

(2) may reject an unusable sample [specimen] that does not comply with this subchapter;

(3) shall notify the submitting agency of any rejection; and

(4) may destroy the rejected sample [specimen], if it is unusable.

(e) [(f)] Testing fee--DPS lab. The director shall absorb the cost of testing necessary to create a profile for a DNA sample [restricted specimen] submitted directly to the DPS Crime Laboratory Service by the collecting agency.

(f) [(g)] Testing fee--approved lab. The collecting agency shall initially pay the cost of testing necessary to create a profile for a DNA sample [restricted specimen] submitted to an outside lab approved under this subchapter. The agency may then seek reimbursement from the criminal justice division of the governor's office under Code of Criminal Procedure, Article 102.056(e).

(g) [(h)] Profile entry. The director shall enter the record's profile into the [its] database.

§28.117. [Restricted] DNA Record.

(a) Maintenance by agency. An agency collecting a [restricted] DNA sample [specimen] from an eligible individual shall maintain a record of the collection under this section, including a copy of the [Restricted] DNA Database Card and any associated record.

(b) Certification. The individual agency representative who collects the sample [specimen] shall certify compliance with the [*Restricted*] *DNA Procedural Guidelines*. The individual shall make the certification on a [Restricted] DNA Database Card completed at the time of collection. The card (LAB-13 [LAB-13R]) includes a certification that:

(1) the individual is properly trained; and

(2) the DNA sample [restricted specimen] was taken in compliance with this subchapter.

(c) Retention period. Unless a court orders differently, the collecting agency shall retain the copy of the [Restricted] DNA Database Card and any associated record for a period of three years from the date of collection.

[(d) Record segregation by agency. The director encourages but does not require a collecting agency to segregate restricted DNA records from any other type of DNA record that may be maintained by the agency.]

(d) [(e)] Maintenance by DPS. The director shall maintain a [restricted] DNA sample [specimen] and record under this subchapter using standard CODIS laboratory procedures.

[(f) Record segregation by DPS. Except as provided by this subsection, the director shall segregate a restricted DNA record collected under this subchapter from other DNA records created and entered into the standard DNA database under other law. If Government Code, §411.148 (DNA Records of Certain Inmates) or §411.150 (DNA Records of Certain Juveniles), require a standard DNA record to be created for inclusion in the standard database, segregation is no longer required and the director may enter the restricted DNA record into the standard DNA database.]

[(g) Access. An agency or other person may access a restricted DNA record in the same manner as a standard DNA record.]

§28.118. Additional Sample [or Specimen].

(a) Prosecutor determines no profile. The director encourages but does not require the appropriate felony prosecutor to file a motion for a [restricted] DNA sample [specimen] to be taken under this subchapter, if an original, DNA sample [restricted specimen]:

(1) - (3) (No change.)

(b) Request from a felony prosecutor. If the defendant has already submitted a [restricted] DNA sample [specimen], an attorney

representing the state in felony prosecutions may submit a written request to the director to determine that a defendant should provide a standard DNA sample [~~specimen or a second restricted specimen under Government Code, §411.1472 (DNA Records of Persons Placed on Community Supervision for Certain Offenses)~~]. The request must include justification demonstrating to the director that the interests of justice or public safety require that the defendant provide an additional DNA sample [~~specimen~~]. [~~The director shall make available on the department's web site a sample letter for a request under this section. If the director concurs with the justification offered by the prosecutor, the director shall forward the request, as appropriate, to:~~]

[~~(1) TDCJ under Government Code, §411.148 (DNA Records of Certain Inmates);~~]

[~~(2) TYC under Government Code, §411.150 (DNA Records of Certain Juveniles);~~]

[~~(3) a court convicting a defendant of a misdemeanor under Government Code, §411.1471(a)(3); or~~]

[~~(4) a court placing a defendant on community supervision, including deferred adjudication community supervision under Government Code, §411.1472 (DNA Records of Persons Placed on Community Supervision for Certain Offenses).~~]

[~~(c) No request required. The director does not require a request from a felony prosecutor for:~~]

[~~(1) a second restricted specimen ordered by a magistrate before release on bail or bond under Code of Criminal Procedure, Article 17.47 (Conditions Requiring Submission of a Specimen); or~~]

[~~(2) a standard DNA specimen, including a sex offender registration specimen, unless the defendant has already given a restricted specimen under Government Code, §411.1471(b) or §411.1472(b).~~]

(c) [~~(d)~~] DPS determines no profile. If the director determines that no valid [~~restricted~~] DNA profile exists for a defendant under this subchapter, the director deems that the interests of justice and public safety require that a defendant provide an additional, standard sample [~~specimen~~]. The director may contact an appropriate felony prosecutor to submit a written request under this section to ensure that each defendant, who is required to provide a sample [~~specimen~~], does provide at least one profiled DNA sample [~~specimen~~].

(d) [~~(e)~~] Profile does exist. If the director determines that a valid [~~restricted~~] DNA record does exist for a defendant, the director:

(1) shall not solicit an additional DNA sample [~~specimen~~] to be taken by TDCJ or TYC without a written request from a felony prosecutor;

(2) may contact the appropriate felony prosecutor to submit a written request under this section; and

(3) may store an unsolicited sample [~~specimen~~] for future testing.

§28.119. Notification and Information.

[~~(a)~~] [~~Notification.~~] If this subchapter requires or permits an agency to communicate with the department or the director, the agency must communicate with the department or the director through the DPS Crime Laboratory Service.

[~~(b) Information. The director may furnish information and forms relating to this chapter to an agency making a request in any form to the director through the Crime Laboratory Service.~~]

§28.120. [~~Restricted~~] DNA Communications.

(a) - (b) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 6, 2007.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: March 25, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER H. ACCREDITATION

37 TAC §§28.131, 28.132, 28.135 - 28.140

The Texas Department of Public Safety proposes amendments to Subchapter H, §§28.131, 28.132, and 28.135 - 28.140, concerning Accreditation. Due to legislation from the 79th Regular Legislative Session in HB 1068, the statutes regarding regulation of DNA laboratories were revised, including the repeal of Texas Government Code, §411.0206; revisions to Texas Government Code, §411.144; and revisions to Article 38.35, Code of Criminal Procedure. Based on the changes to the law, it is necessary to propose revisions and additional clarification of minimum applicable standards for forensic laboratories and other entities.

Amendments to Subchapter H are necessary in order to delete voluntary DPS accreditation from the sections and to add four new categories for which labs may not apply to DPS for accreditation. Other non-substantive grammatical and terminology changes have been made throughout the sections.

Oscar Ybarra, Chief of Finance, has determined that, for each year of the first five-year period the rules are in effect, there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that, for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on the proposal may be submitted to D. Pat Johnson, Director, Crime Laboratory Service, MSC0460, Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; or by electronic mail at LabQA@txdps.state.tx.us. DPS will accept comments for 30 days after publication in the *Texas Register*. For further information, call D. Pat Johnson at (512) 424-2143.

The amendments are proposed pursuant to Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471, which states the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings.

Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471 are affected by this proposal.

§28.131. Purpose.

(a) Generally. This subchapter contains the director's rules adopted under Government Code, §411.0205, that govern:

(1) the [~~granting of~~] recognition of an [~~to a recognized~~] accrediting body by the director; and

(2) (No change.)

(b) - (d) (No change.)

[~~(e) Voluntary DPS accreditation. A laboratory may apply to the director for voluntary DPS accreditation for any purpose if permitted under this subchapter.~~]

§28.132. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Environmental testing--means an analysis by a laboratory conducted for the purpose of determining the chemical, molecular, carcinogenic, radioactive, or pathogenic components of air, water, soil, or other environmental media for use in an administrative, civil, or criminal matter.

(2) Forensic analysis--has the meaning assigned by Code of Criminal Procedure, Article 38.35. The term does not include:

(A) an expert examination or test excluded under Code of Criminal Procedure, Article 38.35, subsection (a)(1) [~~or (2)~~];

(B) - (D) (No change.)

(3) Forensic pathology--includes that portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician. The term does not include a toxicology or other laboratory associated with the office of a medical examiner.

(4) - (5) (No change.)

§28.135. Disciplines and Subdisciplines Subject to DPS Accreditation.

(a) - (b) (No change.)

(c) Limited to subdiscipline. A laboratory may apply to the director for DPS accreditation limited to one or more of the following subdisciplines:

(1) under the controlled substances discipline, subdiscipline [~~limitation~~] may include controlled substances [~~substance (~~]marihuana, precursor analysis, and clandestine laboratory analysis or [~~only)~~ ~~or similar limitation~~];

(2) under the toxicology discipline, subdiscipline [~~limitation~~] may include forensic toxicology, urine drug testing, and [~~(~~]blood alcohol analysis [~~only), or similar limitation~~];

(3) under the biology discipline, subdiscipline [~~limitation~~] may include biology, [~~(~~]serology, and DNA [~~only) or similar limitation~~];

(4) under the firearms/toolmark discipline, subdiscipline [~~limitation~~] may include: firearms, ballistics, and[~~/~~]toolmarks [~~(firearms only), (serial number restoration only), or similar limitation~~];

(5) under the questioned documents discipline, subdiscipline [~~limitation~~] may include questioned documents, [~~(~~]handwriting, and ink analysis [~~only) or similar limitation~~];

(6) under the trace evidence discipline, subdiscipline [~~limitation~~] may include: [~~trace evidence (~~]fire debris [~~only)~~], [~~(~~]explosives [~~only)~~], [~~(~~]fibers [~~only)~~], [~~(~~]gun shot residue [~~only)~~], [~~(~~]glass [~~only)~~], [~~(~~]hairs [~~only)~~], [~~(~~]paint [~~only)~~], [~~(~~]filaments [~~only)~~], and unknown substances [~~or similar limitation~~]; and

(7) (No change.)

(d) - (f) (No change.)

§28.136. Disciplines, Subdisciplines, and Procedures to Which Statutory DPS Accreditation Does Not Apply.

This section describes disciplines, subdisciplines, or procedures [~~a discipline, subdiscipline, or procedure~~] excluded from the definition of forensic analysis or otherwise exempted by the Code of Criminal Procedure, Article 38.35, [~~subsection (a)~~] or by this subchapter based on their nature.

[~~(1) Voluntary DPS accreditation only. This paragraph describes a discipline, subdiscipline, or procedure that is excluded from the definition of forensic analysis by the Code of Criminal Procedure, Article 38.35, subsection (a) and for which recognized accreditation is available. A laboratory may apply to the director for voluntary DPS accreditation for: latent print examination (including development and comparison).~~]

[~~(2) No DPS accreditation.~~]

(1) [~~(A)~~] This paragraph [~~subparagraph~~] describes a discipline, subdiscipline, or procedure that is excluded from the definition of forensic analysis or otherwise exempted by the Code of Criminal Procedure, Article 38.35, [~~subsection (a)~~] and for which no recognized accreditation is appropriate or available. A laboratory may not apply to the director for [~~voluntary or statutory~~] DPS accreditation for:

(A) breath specimen testing under Transportation Code, Chapter 724;[~~.~~]

(B) latent print examination;

(C) digital evidence (including computer forensics, audio, or imaging); or

(D) an examination or test excluded by rule under §411.0205(c), Government Code.

(E) the portion of an autopsy conducted by a medical examiner or other forensic pathologist who is a licensed physician.

(2) [~~(B)~~] This paragraph [~~subparagraph~~] describes a discipline, subdiscipline, or procedure that does not normally involve forensic analysis of physical evidence for use in a criminal proceeding and for which recognized accreditation is inappropriate or unavailable. A laboratory may not apply to the director for [~~voluntary or statutory~~] DPS accreditation for:

(A) [~~(i)~~] forensic photography;

(B) [~~(ii)~~] non-criminal paternity testing;

(C) [~~(iii)~~] non-criminal testing of human or nonhuman blood, urine, or tissue;

(D) [~~(iv)~~] a crime scene search team (whether or not associated with an accredited laboratory) if the team does not engage in forensic analysis because it only engages in the location, identification, collection, or preservation of physical evidence and the activity is not integral to an expert examination or test;

(E) [~~(v)~~] other evidence processing or handling that is excluded under §28.132(2) [~~§28.132(2)(B), (C), or (D)~~] of this title (relating to Definitions); or

(F) [~~(vi)~~] other discipline or subdiscipline so determined by the director.

§28.137. Disciplines, Subdisciplines, and Procedures Exempt from Statutory DPS Accreditation.

(a) (No change.)

(b) Even though a discipline or subdiscipline is forensic analysis, the director has determined that no accreditation is appropriate or available from a recognized accrediting body for the following disciplines, subdisciplines, or procedures and a laboratory may not apply to the director for [~~voluntary or statutory~~] DPS accreditation for:

(1) (No change.)

(2) forensic [~~pathology,~~] anthropology, entomology, or botany;

(3) - (4) (No change.)

(5) serial number restoration [~~digital evidence (subdisciplines may include computer forensics, audio, video, or imaging)~~];

(6) - (10) (No change.)

(11) other discipline or subdiscipline so determined by the director, including those identified and listed at the department's website.

(c) A request for exemption shall be submitted in writing to the director.

§28.138. Full DPS Accreditation.

(a) Issuance and renewal. The director may issue or renew [~~voluntary or statutory~~] accreditation under this section.

(b) - (d) (No change.)

(e) Federal forensic laboratories. A federal forensic laboratory is deemed to be accredited by the director without application provided that the laboratory is accredited by a recognized accrediting body as provided under §28.134 of this subchapter (relating to List of Recognized Accrediting Bodies). A laboratory deemed accredited is not subject to the reporting requirements of this subchapter or the processes provided under Subchapter I of this chapter (relating to Complaints, Special Review, and Administrative [~~Disciplinary~~] Action).

§28.139. Provisional DPS Accreditation.

(a) Issuance and renewal. The director may issue [~~or renew~~] provisional accreditation under this section that is non-renewable for that discipline, subdiscipline, or procedure.

(b) (No change.)

(c) Provisional-Interim. If a laboratory is in good standing with its accrediting body and has made application to renew or replace its accreditation, the laboratory may apply for Provisional DPS Accreditation if necessary to cover a period between times that it qualifies for full DPS accreditation. For this Provisional DPS Accreditation, the laboratory may complete and submit to the director a current form LAB-5 as referenced in §28.138(b) of this subchapter and attach copies of the following:

(1) the application for accreditation by a recognized accrediting body; and

(2) each document provided by the recognized accrediting body that identifies the discipline or sub-discipline for which the laboratory seeks accreditation.

(d) [~~(c)~~] Additional information. The director may require additional information to properly evaluate the application either as part of the original application or as supplemental information.

(e) [~~(d)~~] Reports to director.

(1) The laboratory shall request that the recognized accrediting body provide the director with a copy of each audit, inspection, or review report conducted before full DPS accreditation.

(2) A laboratory shall provide the director with a copy of correspondence and each report or communication between the laboratory and the recognized accrediting body. The laboratory shall submit the copy to the director no later than 30 days after the date the laboratory receives or transmits the correspondence, report, or communication.

(3) A laboratory that discontinues a specific forensic discipline, subdiscipline, or procedure shall submit written notification to the director at least 30 days before the effective date of the discontinuation.

(f) [~~(e)~~] Second sample required. A laboratory with provisional DPS accreditation under this section must:

(1) preserve one or more separate samples of the physical evidence for use by the defense attorney or use under order of the convicting court; and

(2) agree to preserve, and preserve those samples until all appeals in the criminal case are final.

§28.140. Accreditation Term.

(a) Normal term. The normal term for DPS accreditation:

(1) begins on the date of issuance of the initial DPS accreditation letter [~~the director accepts an application~~]; and

(2) extends until withdrawn by the recognized accrediting body or by the director under §28.154 (relating to Withdrawal of DPS Accreditation) [~~expires on the date indicated on the laboratory's recognized accreditation documentation, unless the recognized accrediting body extends its accreditation as part of its routine renewal process~~].

(b) Provisional term [~~application~~].

(1) A laboratory or its discipline or subdiscipline [~~that was not in existence on August 20, 2003, and~~] that applies for accreditation from a recognized accrediting body [~~on or after that date~~] may apply to the director for a provisional DPS accreditation in accordance with §28.139 (relating to Provisional DPS Accreditation) for a term not to exceed one year from the date the director issues the accreditation unless formally extended for good cause by the director [~~accepts the application~~].

(2) If a currently accredited laboratory is in the process of renewing or replacing its accreditation from a recognized accrediting body, prior to the end of its term, and applies for provisional DPS accreditation, the term of that provisional accreditation may not exceed six (6) months.

(c) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 6, 2007.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: March 25, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER I. COMPLAINTS, SPECIAL REVIEW, AND ADMINISTRATIVE ACTION

37 TAC §§28.151 - 28.155

The Texas Department of Public Safety proposes amendments to Subchapter I, §§28.151 - 28.154, and new §28.155, concerning Complaints, Special Review, and Disciplinary Action. Due to legislation from the 79th Regular Legislative Session in House Bill 1068, the statutes regarding regulation of DNA laboratories were revised, including the repeal of Texas Government Code, §411.0206 and revisions to Texas Government Code, §411.0205, Article 38.35 Code of Criminal Procedure, and Article 38.01 Code of Criminal Procedure. Based on the changes to the law, it is necessary to propose revisions and additional clarification of minimum applicable standards for forensic laboratories and other entities.

Amendments to §28.151(a) add new paragraphs (7) and (8). Amendments to §28.152(a) amends paragraph (5) and adds new paragraph (6). The amendments to these sections are necessary as they relate to the complaint process and refer to the new Forensic Science Commission created in Article 38.01 Code of Criminal Procedure. Amendment to §28.154 deletes paragraph (5) regarding withdrawal of DPS accreditation. Current §§28.155 - 28.157 are simultaneously repealed with current §28.157 being proposed as new §28.155. In addition, the title of the subchapter is changed, and other minor non-substantive grammatical and terminology changes have been made throughout the sections.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the amendments and new section are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the amendments and new section are in effect the public benefit anticipated as a result of enforcing the proposal will be current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to the rules. Accordingly, the department is not required to complete a takings impact assessment regarding the rules.

Comments on the proposal may be submitted to D. Pat Johnson, Director, Crime Laboratory Service, MSC0460, Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; or by electronic mail at LabQA@txdps.state.tx.us. DPS will accept comments for 30 days after publication in the *Texas Register*. For further information, call D. Pat Johnson at (512) 424-2143.

The amendments and new section are proposed pursuant to Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471, which states the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings.

Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471 are affected by this proposal.

§28.151. Complaint Process.

(a) Question or complaint. If the director learns of a fact, circumstance, or complaint that raises a question about the integrity or trustworthiness of a laboratory, [~~an individual associated with the laboratory,~~] or a procedure, examination, or test conducted by the laboratory since the date of application for DPS accreditation, the director may take any of the following actions:

(1) communicate further with the source of the complaint to assess the appropriateness of further action;

(2) refer the matter to the laboratory's director for evaluation, audit, correction, or other appropriate action;

(3) initiate an audit under §28.152 of this title (relating to Unscheduled Audit);

(4) issue a letter to the laboratory [~~or individual~~]:

(A) demanding an immediate response and explanation of the matter;

(B) demanding that the laboratory permit or arrange for an immediate inspection or audit of the matter; or

(C) explaining the action to be taken by the director in the matter;

(5) notify or refer the matter to a law enforcement agency or prosecutor and recommend appropriate criminal action; [~~or~~]

(6) refer the matter to a district judge and recommend appropriate action to convene a court of inquiry under Code of Criminal Procedure, Chapter 52;[~~.~~]

(7) refer the matter to the Texas Forensic Science Commission; and

(8) any other actions deemed appropriate by the director.

(b) Source and scope. A question or complaint may be raised by any source, including an individual, entity, or audit. The scope of any action taken or proposed by the director under this section shall be determined by the director, based on the nature of the question or complaint.

(c) Records. The director may maintain a public record of a laboratory's accreditation or approval status.

(1) The director may maintain on the public record a notation of an action taken under this subchapter, including a question, complaint, or audit.

(2) A question, complaint, or audit is public information when in the possession of the director.

§28.152. Unscheduled Audit.

(a) If the director determines that there is reasonable cause to believe that a laboratory has failed to maintain quality assurance standards as provided under the laboratory's specific policy required by its recognized accrediting body or the *FBI DNA Quality Assurance Audit Document*, or has violated any rule in this chapter, the director may take appropriate action, including one or more of the following:

(1) direct the laboratory to conduct an internal audit and implement appropriate corrective action;

(2) order the laboratory to obtain, at its own expense, a special external audit by an auditor approved by the laboratory's recognized accrediting body and provide that report to the director within a reasonable time frame determined by the director not to exceed 60 days from the date of the order;

(3) notify the laboratory that further testing is not approved by DPS [~~order the laboratory to cease conducting a new DNA analysis for a Texas criminal case~~];

(4) initiate an evaluation of continued accreditation under Subchapter H of this chapter; or

(5) provide appropriate compliance information to the Texas Forensic Science Commission and/or any entity that may be responsible for oversight of the laboratory; or[.]

(6) any other actions deemed appropriate by the director.

(b) An [A special] audit under this subsection shall comply with [the] minimum standards [of the current *Focused, Unscheduled, Non-compliance Guidelines*] for audits or inspections as established [that have been issued] by the director of the department's Crime Laboratory Service [Section].

(c) The director of the department may enter an accredited [a CODIS user] laboratory at any reasonable time to conduct an inspection or audit under this chapter. [However, the director will not enter a forensic DNA laboratory or an accredited laboratory to conduct an on-site inspection or audit under this chapter.]

§28.153. Corrective Action Plan.

(a) If a laboratory is subject to an [a] unscheduled audit that has resulted in a finding of non-compliance, the laboratory shall propose a corrective action plan and submit the plan to the director within 30 days from the date that the laboratory receives the audit results. If the laboratory has been notified that further testing is not approved [ceased conducting DNA analyses pursuant to an order under §28.152(3) of this title (relating to Unscheduled Audit)], the plan should identify the date that the laboratory intends to reinstate approved [DNA] testing.

(b) A proposed corrective action plan under this section must fully address each non-compliance finding and identify corrective action that meets or exceeds the standards:

(1) required by the laboratory's recognized accrediting body; and

(2) approved by the director.

(c) The director shall promptly review a proposed corrective action plan and take the following action:

(1) approve the corrective plan if it meets the requirements of this section; or

(2) decline to approve the corrective plan and identify necessary revisions to the plan.

(d) The director shall notify the laboratory of approval or disapproval of the audit response. If disapproved, the director shall notify the laboratory of required corrective action, and the laboratory shall implement the corrective action in a timely manner specified in the notification, except as provided by subsection (e) of this section.

(e) A laboratory shall implement and complete an approved corrective action plan described in subsection (d) of this section, unless the laboratory demonstrates good cause for extension to the director before the due date for completion.

§28.154. Withdrawal of DPS Accreditation.

The director may withdraw [full or provisional] DPS accreditation for a laboratory, discipline, or subdiscipline if the laboratory [or an individual associated with the laboratory]:

(1) violates this chapter;

(2) fails to respond meaningfully within five business days to a letter issued by the director under this subchapter;

(3) fails to timely submit an audit required under this subchapter; or

(4) fails to allow or substantially interferes with an inspection or audit conducted under this subchapter.[; or]

[(5) is the subject of:]

[(A) an indictment presented under the Code of Criminal Procedure, Chapter 20, based on conduct related to this subchapter; or]

[(B) a court of inquiry convened under the Code of Criminal Procedure, Chapter 52, based on conduct related to this subchapter.]

§28.155. Review by Director.

(a) Reconsideration. A laboratory that has been ordered to take action under this subchapter may request reconsideration by the director in writing within 15 days of the order.

(b) Reinstatement. An accredited laboratory that has had DPS accreditation withdrawn automatically under §28.141 of this title (relating to Automatic Withdrawal of DPS Accreditation) may have its accreditation reinstated by the director if the laboratory shows that it presently meets or exceeds the quality assurance standards required by the laboratory's recognized accrediting body.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 6, 2007.

TRD-200700328
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Earliest possible date of adoption: March 25, 2007
For further information, please call: (512) 424-2135

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SUBCHAPTER I. COMPLAINTS, SPECIAL REVIEW, AND DISCIPLINARY ACTION

37 TAC §§28.155 - 28.157

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Public Safety proposes the repeal of §§28.155 - 28.157, concerning Complaints, Special Review, and Disciplinary Action. Section 28.155 and §28.156 are being completely repealed, while §28.157 is being repealed and simultaneously filed as new §28.155.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be current and updated rules. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

The department has determined that Chapter 2007 of the Government Code does not apply to the rules. Accordingly, the de-

partment is not required to complete a takings impact assessment regarding the rules.

Comments on the proposal may be submitted to D. Pat Johnson, Director, Crime Laboratory Service, MSC0460, Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; or by electronic mail at LabQA@txdps.state.tx.us. DPS will accept comments for 30 days after publication in the *Texas Register*. For further information, call D. Pat Johnson at (512) 424-2143.

The repeal is proposed pursuant to Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471, which states the director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings.

Texas Government Code, §§411.0205, 411.144, 411.147, 411.152, and 411.1471 are affected by this proposal.

§28.155. Prohibition of CODIS User Lab Activity.

§28.156. Forensic DNA Laboratory Sanctions.

§28.157. Review by Director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 6, 2007.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

SUBCHAPTER A. GENERAL PROVISIONS

DIVISION 2. PROGRAM REQUIREMENTS

31 TAC §375.12, §375.15

Proposed amended §375.12 and §375.15, published in the August 4, 2006, issue of the *Texas Register* (31 TexReg 6181), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on February 8, 2007.

TRD-200700366

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 40. CHRONIC WASTING DISEASE

The Texas Animal Health Commission adopts the repeal of and new §40.5 to Chapter 40, which is entitled "Chronic Wasting Disease" ("CWD"). The repeal of §40.5 is adopted without changes to the proposal as published in the August 25, 2006, issue of the *Texas Register* (31 TexReg 6565) and will not be republished. New §40.5 is adopted without changes to the proposed text as published in the December 22, 2006, issue of the *Texas Register* (31 TexReg 10222) and will not be republished.

Previously, the Texas Animal Health Commission proposed the repeal of §40.5 in the August 25, 2006, issue of the *Texas Register* (31 TexReg 6565). At that time, it was the intent of the Commission to amend §40.5 rather than to repeal the rule in its entirety. The Commission intended to delete and/or modify some of the subsections, when in fact the rule was published for proposed repeal. In December, 2006, the Commission proposed a new §40.5 to clarify any confusion. At that time, the Commission also discussed the past history of this rule in the preamble and also published comments which were received regarding the proposed repeal.

The original rule was adopted by the Commission and published in the December 23, 2005, issue of the *Texas Register* (30 TexReg 8674). The purpose of that rule was to provide for identification record keeping and reporting requirements on elk. Also the intent was to require the registration of Texas premises where commercial elk are maintained. The premise requirements were coordinated with another proposal for a premises identification program for all livestock species that was proposed at the same time the elk requirements were adopted. However those proposed premises registration requirements were not acted upon. The Commission, at their August 1st, 2006 meeting, proposed to repeal the rules related to elk but with the intent of modifying the rule after appropriate comments. The rule was published for comment in the August 25, 2006, issue of the *Texas Register* (31 TexReg 6565). The Commission received a number of comments and responded to them at their December 5th, 2006 meeting. At that time, it was the intent of the Commission to amend §40.5 rather than to fully repeal the rule in its entirety. The Commission intended to delete some subsections and modify some of the other subsections. However because the rule was published for a full repeal they could not modify the rule. Because the Commission intended to modify the rule a proposal was published for comments in the *Texas Register*.

The Commission adopts subsection (a) to require an official identification or electronic device approved by the Commission for animals moved off or onto a premise. Identification of elk moving in commerce is necessary in order to trace animals exposed to a disease.

Subsection (b) relates to the requirement to maintain records, which facilitates surveillance by allowing Commission personnel to determine where an animal originated or where exposed elk may have gone. The rule provides for the information to be maintained.

Also the rule contains a voluntary testing standard for elk for CWD. This is an issue that received some comments that it should not be permissible, but rather mandatory. As a practical matter, voluntary testing of elk has not been statistically significant and has created the most concern from various stakeholder associations. There must be adequate test surveillance of elk to address concerns about the potential incursion of Chronic Wasting Disease in Texas. The Commission, at this time, is maintaining the voluntary standard but Commission staff will work to develop an acceptable standard to try and engage a greater statistical sample in testing of elk for CWD. The rule also provides for "violations" of Commission requirements.

No comments were received regarding adoption of the rules.

4 TAC §40.5

STATUTORY AUTHORITY

The repeal is adopted as follows:

The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061. As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. That authority is found in §161.048. A person is presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or exercises care or control over the animal. That authority is under §161.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2007.

TRD-200700396
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: March 4, 2007
Proposal publication date: August 25, 2006
For further information, please call: (512) 719-0714

♦ ♦ ♦

4 TAC §40.5

STATUTORY AUTHORITY

The new rule is adopted as follows:

The Commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The Commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the Commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the Commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061. As a control measure, the Commission by rule may regulate the movement of animals. The Commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The Commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. That authority is found in §161.048. A person is presumed to control the animal if the person is the owner or lessee of the pen, pasture, or other place in which the animal is located and has control of that place; or exercises care or control over the animal. That authority is under §161.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene Snelson
General Counsel
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CHAPTER 41. FEVER TICKS

4 TAC §41.6, §41.20

The Texas Animal Health Commission (Commission) adopts amendments to Chapter 41, concerning Fever Ticks, §41.6 and §41.20 without changes to the proposed text as published in the December 22, 2006, issue of the *Texas Register* (31 TexReg 10225) and will not be republished.

This adoption clarifies a treatment requirement in §41.6 and modifies the Tick Eradication Quarantine line in Starr County as provided for in §41.20.

Chapter 167 of the Texas Agriculture Code, entitled "Tick Eradication", directs the Commission to eradicate all ticks capable of carrying Babesia in this state and requires the Commission to protect all land, premises, and livestock in this state from exposure to those ticks. Per §167.006, captioned *Designation of Tick Eradication Area,* any county or part of a county that may contain ticks, as determined by the Commission, may be designated for tick eradication by the Commission.

The Texas Cattle Fever Tick Eradication Program (TCFTEP), operated by the United States Department of Agriculture was established to prevent the spread of *Boophilus* fever ticks from a tick eradication quarantine area, preventative quarantine area, or control purpose quarantine area to a free area. The Commission has, by rule, established a permanent quarantine area for the purpose of detecting and eradicating Fever Ticks. It is comprised of a narrow band extending through eight South Texas counties along the Rio Grande, beginning at Del Rio and ending at Brownsville.

The fever ticks, scientifically known as the *Boophilus annulatus* and *B. microplus,* are capable of carrying protozoan parasites, *Babesia bovis* and *B. bigemina (Texas Fever)* that cause death in up to 90 percent of the affected cattle. Both fever ticks and babesiosis are prevalent in Mexico. Fever ticks are brought into Texas from Mexico on estray or smuggled livestock and on wildlife, such as white-tailed deer that can serve as a host for the *Boophilus ticks.* Movement of deer from the quarantine area or quarantined premises could promote and propagate the spread of these ticks.

The Tick Quarantine Eradication boundary as currently defined by the existing requirements in Starr County begins where U.S. Highway 83 intersects the Zapata-Starr County line; it then follows fences through and past the Falcon State Park for approximately seven miles before reconnecting with U.S. Highway 83 in a southeasterly direction to the south fence of the M. Ramirez Pasture at the north city limits of Roma. The current configuration of that part of the quarantine line is difficult to manage as a quarantine line and is not an effective barrier for preventing exposure to ticks. Tick exposure has occurred outside the quarantine line just north of this area in Zapata County and south of the area in Falcon Heights and Chapeno.

The Commission adopts the amendments using the highway, U.S. Highway 83, as the boundary. This would be a clearer quarantine line to demark and also serves as a far more effective barrier than a fence A clearer boundary would address the problem with the current boundary that is impacted by the shrinking level of Falcon Lake which has been used as a buffer; the lower water level in the reservoir has allowed for more excursions of livestock from Mexico with a greater risk for carrying ticks. Finally, the change in the line will make it easier for individuals to determine the location of the Quarantine Area.

Language is being added to §41.6(b)(1) to clarify the requirement regarding treatment to state that it must be through a swim vat

so as to clarify that spray dipping is not acceptable for animals under that requirement.

No comments were received regarding adoption of the rules.

STATUTORY AUTHORITY

The amendments are adopted under the Texas Agriculture Code, Chapter 167, §167.003, which provides for general powers and duties of the commission to eradicate fever ticks and provides authority for adopting the necessary rules to fulfill those duties. Section 167.004 authorizes the commission by rule to define what animals can be classified as exposed to ticks. Section 167.006 authorizes the commission to designate for tick eradication any county or part of a county that the Commission believes contains ticks. Section 167.007 authorizes the Commission to conduct tick eradication in the free area. Section 167.021, entitled "General Quarantine Power" provides that "(t)he commission may establish quarantines on land, premises, and livestock as necessary for tick eradication." Section 167.022, entitled "Quarantine of Tick Eradication Area" provides the commission authority designating a county or part of a county for tick eradication. Section 167.023, entitled "Quarantine of Free Area" provides the commission authority to establish quarantine in the Free Area. Section 167.024, entitled "Movement In or From Quarantined Area" provides the requirement to get appropriate authorization and compliance with the requirements prior to movement.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene Snelson
General Counsel
Texas Animal Health Commission
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CHAPTER 43. TUBERCULOSIS
SUBCHAPTER D. MOVEMENT RESTRICTION ZONE (MRZ)

4 TAC §43.30

The Texas Animal Health Commission (Commission) adopts amendments to Chapter 43, Subchapter D, concerning the Eradication of Tuberculosis, §43.30, without changes to the proposed text as published in the December 22, 2006, issue of the *Texas Register* (31 TexReg 10226) and will not be republished.

Subchapter D provides for two different zones or areas within the state of Texas in compliance with federal requirements regarding tuberculosis in cattle and bison.

USDA authorized Texas to establish different zones within the state based on risk classifications. In order to address the tuberculosis risk associated with the area located in and around the city of El Paso, Texas, the Commission created a separate zone, or area, for El Paso and Hudspeth Counties due to the prevalence of tuberculosis in that area. The rules for that area establish movement criteria both in and out of the zone as well as distinctions on who qualifies for any different standards; the purpose of the rules was to allow the rest of Texas to achieve Tuberculosis Free status through the creation of the zone.

On September 29, 2006, USDA published in the *Federal Register* an interim rule amending its bovine tuberculosis regulations regarding State and zone classifications. In that publication, USDA determined that all of Texas, including the zone defined in Subchapter D, satisfies the criteria for a state tuberculosis designation as accredited-free. Therefore, USDA improved the state of Texas tuberculosis designation from modified accredited advanced to accredited-free.

The classification designation by USDA declaring Texas as an accredited free state frees the state from the tuberculosis testing requirements for Texas cattle moving interstate. As a result, the Commission proposes to remove those requirements regarding movement as currently stated in §43.31(b) and (c). However, the Commission is maintaining the remainder of the requirements relative to the zone for the purpose of doing surveillance to ensure that the state maintains a Tuberculosis Free Status.

No comments were received regarding adoption of the rule.

STATUTORY AUTHORITY

The amendment is adopted under the Texas Agriculture Code, Chapter 161, §161.041(a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Also §161.054 authorizes the commission to regulate by rule the movement of animals. This is further supported by §161.081 which authorizes the commission to regulate the entry of such livestock into Texas from another state. Section 162.009 authorizes the commission to examine, test and retest any cattle as necessary. Section 161.057 authorizes the commission to adopt rules which may prescribe criteria for classifying areas in the state for disease control. The commission may prescribe different control measures and procedures for areas with different classifications.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Gene Snelson
General Counsel
Texas Animal Health Commission
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CHAPTER 51. ENTRY REQUIREMENTS

4 TAC §§51.1 - 51.4, 51.8 - 51.10, 51.12 - 51.15

The Texas Animal Health Commission (Commission) adopts amendments to Chapter 51, entitled "Entry Requirements", §§51.1 - 51.4, 51.8 - 51.10 and 51.12 - 51.15 without changes to the proposed text as proposed in the December 29, 2006,

issue of the *Texas Register* (31 TexReg 10468) and will not be republished.

The amendments are adopted to provide greater clarity to the rules and by adding, modifying and removing requirements as provided for herein. The Commission did not receive any comments and rules will not be republished.

The modifications to the rules are identified below:

The Commission is adding in §51.1(17) to provide a definition for Radio Frequency Identification Device because this type of device is authorized to identify some animals being moved interstate.

The Commission is adding in §51.2(a)(2) language to require a permit requester to provide certain information in order to receive a valid permit. This is to address the issue of people calling after business hours to obtain a permit number provided in the recorded message without leaving the necessary information to ensure that Commission staff can follow up and verify entry.

The Commission is modifying §51.3(a), regarding exceptions from obtaining a permit and health certificate. The modification is to remove the exception that would allow dairy cattle to go through a USDA specifically approved livestock market by the owner or consigned there and accompanied by a waybill. That exception is added for beef cattle 18 months of age and over delivered directly from a USDA specifically approved livestock market by the owner or consigned there and accompanied by a waybill. This is to differentiate from dairy cattle, for which there are specific tuberculosis test requirements.

The amendment adds language to §51.3(a) by adding a new paragraph (9) for an exception to having a permit and health certificate for out of state feral swine consigned directly to slaughter.

In §51.3(c)(1) the Code of Federal Regulations reference was no longer correct and that provision is being amended to reference the correct part.

Section 51.3(c)(7) and (8) are deleted because those provisions duplicate similar language which already exists in §51.3(c)(1) and (2).

Section 51.4(b) regarding in-state participation in shows, fairs and exhibitions is being modified to exempt in state dairy cattle from having to meet the tuberculosis test requirements for out of state dairy cattle entering Texas. The purpose of the entry requirement is to protect the Texas dairy cattle from the risk of being exposed to Tuberculosis. However all Texas dairy animals were recently tested for Tuberculosis by the Commission and the state recently re-gained Tuberculosis Accredited Free status so there is not a need to require a test for their participation in an exhibition. The test requirement for out of state dairy cattle still applies if they participate in a Texas exhibition, show or fair.

In §51.8(a) the Commission is adding language requiring out of state cattle, being shipped to a Texas feedyard, to have official identification, from the state of origin. The reason is that Texas receives out of state cattle being shipped to slaughter, the vast majority of which do not have identification that may be traced to the state of origin. If the animals are test positive for Brucellosis at slaughter, it is important to trace to the state of origin. If an animal tests positive for Brucellosis at slaughter, the state must be able to show the state of origin, otherwise, it might affect the state's goal toward achieving Brucellosis Free Status.

Section 51.8(b)(3) provides that "[a]ll sexually intact dairy cattle that are less than six months of age must obtain a entry permit from the Commission, as provided in §51.3(a), to a designated facility where the animals will be held until they are tested negative at the age of six months". The reference is incorrect and it is being changed to reflect the correct §51.2.

Section 51.8(b)(7) is marked for repeal because Texas has achieved Tuberculosis Free status eliminating the need for Tuberculosis test requirements for interstate movement of cattle from Texas. The USDA published in the Federal Register, on September 29, 2006, an interim rule amending their bovine tuberculosis regulations regarding State and zone classifications. In that rule, USDA raised the designation of Texas from modified accredited advanced to accredited-free. Because the USDA determined that Texas meets the criteria for designation as an accredited-free State, the USDA has classified the entire state of Texas as being an accredited free state for Tuberculosis; as a result, there are no testing requirements for Texas cattle moving interstate.

This adds language to §51.9(b)(1) regarding identification requirements for fowl entering Texas. The revision is in response to the American Ostrich Association which requested that the Commission allow RFID tags or other permanent tags for identification purposes for those birds being moved into the state.

This revises §51.10(a) of the Chronic Wasting Disease entry requirements by removing everything in capital letter format and restating the phrase in appropriate regulatory format. Texas Parks and Wildlife Department (TPWD) is referred to in the subsection in order to recognize its authority to prohibit the entry of species under their jurisdiction. RFID devices are added to §51.10(b) to allow them as forms of official identification.

The requirement in §51.12(b) is being deleted because it duplicates the same statement in §51.12(a).

This revision in §51.12(i) regarding sheep corrects a grammatical error in the last adoption which used the word "of" that should have read "or".

The entry requirements for equine in §51.13(a) adds paragraph (6) as an exemption for equine foals, under eight months (8) of age, which are nursing and accompanying a negative dam with a current negative test. This also conforms to the Commission's current intra-state sales requirement.

The Texas Pork Producers request removing the vaccination requirement for Bratislava as a part of the combination Leptospirosis vaccine as found in §51.14(c). Texas currently requires a vaccine that contains six different Leptospira strains: Bratislava, Canicola, Hardjo, Icterohaemorrhagiae, Grippotyphosa, and Pomona. However, most states no longer include the Bratislava strain in their vaccine requirements but rather use a vaccine with the remaining five strains of Leptospirosis vaccine which are: Canicola, Hardjo, Icterohaemorrhagiae, Grippotyphosa, and Pomona.

Pilgrim's Pride requests changing the rules to allow for broilers that have been vaccinated for Infectious Laryngotracheitis with a chick embryo vaccine to be transported to Texas for immediate slaughter. The change also specifies that the transportation route used for such poultry to slaughter be approved by the Commission. This provision would only apply to broilers because breeder birds can be vaccinated with a tissue culture vaccine that is acceptable by the State of Texas. Broilers, on the other hand, have to be vaccinated with a chick embryo type vaccine that is not currently authorized for use for entry into the state.

No comments were received regarding adoption of the amendments.

STATUTORY AUTHORITY

Chapter 51 is adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, by §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock. If the commission determines that a disease listed in §161.041 of this code or an agent of transmission of one of those diseases exists in a place in this state among livestock, or that livestock are exposed to one of those diseases or an agent of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place. That authority is found in §161.061.

As a control measure, the commission, by rule may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce. The commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. That authority is found in §161.054. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease. That authority is found in §161.048.

Section 161.005 provides that the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Section 161.061 provides that if the commission determines that a disease listed in §161.041 of this code or an agency of transmission of one of those diseases exists in a place in this state or among livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl, or that a place in this state where livestock, exotic livestock, domestic animals, domestic fowl, or exotic fowl are exposed to one of those diseases or an agency of transmission of one of those diseases, the commission shall establish a quarantine on the affected animals or on the affected place.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2007.

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Gene Snelson
General Counsel
Texas Animal Health Commission
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For further information, please call: (512) 719-0714

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TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 49. 2005 HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN AND RULES

10 TAC §§49.1 - 49.23

The Texas Department of Housing and Community Affairs (the Department) adopts the repeal of §§49.1 - 49.23, concerning the 2005 Housing Tax Credit Program Qualified Allocation Plan and Rules. The repeal is adopted without changes to the proposal as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7848).

The sections are repealed in order to enact new sections conforming to the requirements of regulations enacted under the Internal Revenue Code of 1986, §42 as amended, which provides for credits against federal income taxes for owners of qualified low income rental housing.

No comments were received regarding the adoption of the repeal.

The repeal is adopted pursuant to the authority of the Texas Government Code, Chapter 2306; and the Internal Revenue Code of 1986, §42 as amended, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs and Executive Order AWR-92-3 (March 4, 1992), which provides this Department with the authority to make housing tax credit allocations in the State of Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2007.

TRD-200700383
Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
Effective date: March 1, 2007
Proposal publication date: September 15, 2006
For further information, please call: (512) 475-4595

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CHAPTER 49. 2007 HOUSING TAX CREDIT PROGRAM QUALIFIED ALLOCATION PLAN AND RULES

10 TAC §§49.1 - 49.23

The Texas Department of Housing and Community Affairs adopts new §§49.1 - 49.23, with changes to the proposed text as published in the September 15, 2006, issue of the *Texas Register* (31 TexReg 7849), concerning the 2007 Housing Tax Credit Program Qualified Allocation Plan and Rules. The new sections are necessary to provide procedures for the allocation by the Department of certain housing tax credits available under

federal income tax laws to owners of qualified rental housing developments. The new rules were adopted at the meeting of the Governing Board held November 9, 2006 following their publication in the *Texas Register* and a series of public meetings held in each of the 13 state service regions.

These rules are being adopted to provide procedures for the allocation, by the Department, of housing tax credits available under federal income tax laws to owners of qualified affordable rental housing developments. The staff received and reviewed significant public comments on the new rules.

The Department received comment both at public hearings and by written comments. This order includes a summary of the comments received and provides the Department's reasoned response to all comments received. The comments and responses include both administrative changes made as well as substantive comments on QAP proposed rules changes and suggested rule changes by staff and the public.

For easier review, the comments are presented in the order that they appear in the QAP. Citation references are to the numbered sections of the blacklined 2007 QAP, and include corresponding page numbers to the blacklined QAP for reference. After each numbered section and title, numbers are shown in parentheses. These numbers refer to the person or entity that made the comment as reflected in the Addendum. The summary of comment for each section is located under "Comment." Staff's response to the comment is located under "Staff Response." If comment resulted in a recommended language change from the Draft 2007 QAP, the language, as recommended at the November 9, 2006 TDHCA Board meeting, is provided with the new language changes from the Draft 2007 QAP highlighted. Under "Board Response," a summary of the Board action taken at the November 9, 2006 meeting where the rules were unanimously adopted is provided. If the Board action resulted in language changes outside of staff's recommendations, the language is provided with the specific change.

The adoption of the rule is subject to a statutory requirement that the Governor "approve, reject, or modify and approve the qualified allocation plan not later than December 1" as provided in Texas Government Code §2306.6724(c). Upon final approval by the Governor the final rules will published in the *Texas Register*.

II. SUMMARY OF COMMENTS, REASONED RESPONSE, AND BOARD ACTION FOR THE DRAFT 2007 QAP.

Chapter 49--General (no specific section of the QAP provided in comment)--(2,14, 26, 30, 33, 34, 54)

Comment:

Texas Association of Community Development Corporation (TACDC) members are very interested in augmenting the Housing Tax Credit program to allow for and encourage a variety of development types targeted to many different income levels, not just traditional multifamily rental. Given the unique design of the program and inherent complications in administering the program, they understand there will be challenges to achieve this goal. TACDC also wants to encourage SRO and scattered site developments through the tax credit program. No specific language change was proposed (54). Additional comment generally asserts that local housing finance corporations provide a good service to affordable housing (30).

One comment from the National Housing Trust asserts that the first step to resolving America's affordable housing problem is to preserve the affordable housing we already have. While the demand for affordable rental housing remains high, the supply of this housing is shrinking. Comment further commends the Department on its successful efforts to preserve and improve existing, affordable housing in Texas (14). One commenter asserts that the current draft dissuades preserving existing housing (26). No specific language change was proposed

Comment also requests that, when feasible, green technologies and methods should be integrated into rehabilitation in order to improve energy efficiency, conserve water and other resources, and use healthy building materials. These types of improvements benefit both residents and property owners through utility savings and lower maintenance costs, result in longterm sustainability, and provide residents with a better and healthier living environment (14). No specific language change was proposed.

One commenter provided a substantial report that demonstrates his assertion that there are deficiencies in the rules and regulations of governmental agencies dealing in low-income multifamily housing subsidies and the impacts on communities unless governmental agencies craft and enforce rigorous standards for tenants of multifamily housing subsidized by TDHCA and other agencies (2). This comment did not provide specific comment to any particular section of the QAP, nor did it submit recommended language to the draft QAP.

Additional comment requests that the Department provide a stronger focus on addressing the needs of the homeless populations throughout Texas. This comment did not provide specific comment to any particular section of the QAP, nor did it submit recommended language to the draft QAP (33).

Comment also requested that the Department include more consideration given to public opposition and the opposition of elected officials. Additionally, comment requests that if there are remaining funds after making initial award recommendations, that the Department not just award at a developer's request (34).

Staff Response:

Items not referring to a specific section of the QAP have not been directly addressed in this response, although staff appreciates the comment. Staff appreciates the commendation relating to Department efforts in preservation and energy efficiency and agrees that the draft reflects the Department's efforts to preserve and improve existing housing.

Staff would also like to note that all public comment is taken very seriously, whether it is support or opposition. All comment is reflected in the summary made to the TDHCA Board. Additionally, there are many sections of the QAP which require approval at the local level before an application may meet eligibility, threshold and/or selection criterion.

It should be noted that staff may not recommend and the Board may not approve an application for tax credits unless the Development is necessary to provide needed decent, safe, and sanitary housing at rental prices that individuals or families of low and very low-income or families of moderate income can afford.

Board Response:

Accepted staff's recommendation.

§49.1--Purpose and Authority; Program Statement; Allocation Goals (Administrative), Page 2 of 69

Administrative Change:

Staff recommends the following change to this clarify references to "the Code" throughout the QAP:

(a) Purpose and Authority. The Rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the Department) of Housing Tax Credits authorized by applicable federal income tax laws. The Internal Revenue Code of 1986, §42, (the "Code") as amended, provides for credits against federal income taxes for owners of qualified low-income rental housing Developments. That section provides for the allocation of the available tax credit amount by state housing credit agencies. Pursuant to Chapter 2306, Subchapter DD, Texas Government Code, the Department is authorized to make Housing Credit Allocations for the State of Texas. As required by the Internal Revenue Code, §42(m)(1), the Department developed this Qualified Allocation Plan (QAP) which is set forth in §§49.1 - 49.23 of this title. Sections in this chapter establish procedures for applying for and obtaining an allocation of Housing Tax Credits, along with ensuring that the proper threshold criteria, selection criteria, priorities and preferences are followed in making such allocations.

Board Response:

Accepted staff's recommendation.

§49.3(5)(A) - Applicable Percentage (31), Page 3 of 69

Comment:

Comment was received that the words "the greater of" were crossed out in a typo. It stands to reason that the APR would be the greater of the two options listed (31).

Staff Response:

Staff concurs and recommends the following language:

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development (New Construction, Reconstruction, and/or Rehabilitation), as defined more fully in the Code, §42(b).

(A) For purposes of the Application, the Applicable Percentage will be projected at:

(i) 40 basis points over the current applicable percentage for 70 percent present value credits, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department, or

(ii) 15 basis points over the current applicable percentage for 30 percent present value credits, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.

Board Response:

Accepted staff's recommendation.

§49.3(13)(D)--At-Risk (17), Pages 3 and 4 of 69

Comment:

Comment was received regarding the new language added that Developments must be at risk of losing all affordability. The commenter asserts that many of the eligible programs have two components of both a loan and a rental assistance contract. The rental assistance contracts typically expire long before the loans; thus, if the rental assistance is lost, but not your loan, the project is still in extreme jeopardy of not being able to serve lower income residents (17).

Staff Response:

Staff concurs with the comment and proposes the following language:

(D) Developments must be at risk of losing all affordability from all of the financial benefits available on the Development, provided such benefit constitutes a subsidy, described in subparagraph (A) of this paragraph on the site. However, Developments that have an opportunity to retain or renew any of the financial benefit described in subparagraph (A) of this paragraph must retain or renew all possible financial benefit to qualify as an At-Risk Development.

Board Response:

Accepted staff's recommendation.

§49.3(30) - Developer (31), Page 5 of 69

Comment:

Comment was received that the word "exceed" was deleted unintentionally (31).

Staff Response:

Staff concurs and recommends the following language:

(30) Developer--Any Person entering into a contract with the Development Owner to provide development services with respect to the Development and receiving a fee for such services (which fee cannot exceed the limits identified in §49.9(d)(6)(B) of this title) and any other Person receiving any portion of such fee, whether by subcontract or otherwise.

Board Response:

Accepted staff's recommendation.

§49.3(52)(G) - Definitions - Ineligible Building Types (1, 31, 38), Page 7 of 69

Comment:

Comment suggests that although it is desirable to offer a variety of unit types, it is more important to address the needs in a particular market. The comment further requests the deletion of this section's restrictions on minimum percentages of unit types and let the market dictate the unit mix (1, 38). Additional comment suggests that the differences between (E) and (G) of this section are very confusing regarding 4 bedroom units and suggests that another item be added to the list in Paragraph G that clarifies that up to 5% of the units may be 4 bedrooms, if this is still the intent of the language in this section (31).

Staff Response:

While Staff appreciates the arguments for the deletion of this section's restrictions on minimum percentages of unit types, the Department's Board has indicated that the draft language provides for appropriate unit mixes. However, staff does recommend the following change to this section which clarifies the restrictions for 4 bedrooms.

(E) Any Development that violates the Integrated Housing Rule of the Department, §1.15 of this title.

(F) Any Development located in an Urban/Exurban Area involving any New Construction (excluding New Construction of non-residential buildings) of additional Units (other than a Qualified Elderly Development, a Development composed entirely of single family dwellings, and certain specific types of transitional housing for the homeless and single room occupancy units, as

provided in the Code, §42(i)(3)(B)(iii) and (iv)) in which any of the designs in clauses (i) - (ivii) of this subparagraph are proposed. For Applications involving a combination of single family detached dwellings and multifamily dwellings, the percentages in this subparagraph do not apply to the single family detached dwellings. For Intergenerational Housing Applications, the percentages in this subparagraph do not apply to buildings that are restricted to the age requirements of a Qualified Elderly Development. An Application may reflect a total of Units for a given bedroom size greater than the percentages stated below to the extent that the increase is only to reach the next highest number divisible by four.

(i) More than 30% of the total Units are one bedroom Units; or

(ii) More than 55% of the total Units are two bedroom Units; or

(iii) More than 40% of the total Units are three bedroom Units; or

(iv) More than 5% of the total Units in the Development with four or more bedrooms.

Board Response:

Accepted staff's recommendation.

§49.3(56) - Definitions - Local Political Subdivision (Administrative), Page 7 of 69

Administrative Change:

Staff recommends the following change to this definition so that §49.9(i)(5) is more understandable:

(56) Local Political Subdivision--A county or municipality (city) in Texas. For purposes of §49.9(i)(5) of this title, a local political subdivision may act through a Government Instrumentality such as a housing authority, housing finance corporation, or municipal utility, even if the Government Instrumentality's creating statute states that the entity is not itself a "political subdivision."

§49.3(66)(A) - Definitions - Principal (9), Page 8 of 69

Comment:

Comment suggests that the current language captures all partners of a partnership regardless of ownership interest, specifically very minor limited partners, and is inconsistent with the Principal definitions under corporations and limited liability companies, which only requires a 10% ownership interest (9).

Staff Response:

Staff recommends no change to this definition because the definition is limited to any Person that will exercise control over the entity, which could include persons with less than 10% ownership. It should be noted that the result of this change would not effect any documentation requirements as it relates to capturing Development information in the application, which seems to be the intention of the commenter.

Board Response:

Accepted staff's recommendation.

§49.3(75) - Definitions - Reconstruction (1, 38, 20, 25, 36, 37, 5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55), Page 9 of 69

Comment:

Comment points to the fact that the current draft QAP does not allow for an increase in number of units under the definition of Reconstruction. For example, the total demolition of a 100 unit building with a mix of two and three-bedroom units is going to increase in number of units, when smaller one-bedroom units are added to the unit mix. Under the current definition, an increase in the units above the 100 original units would preclude it from qualifying as "Reconstruction." Instead, it would be 100% New Construction (and would therefore not be eligible for point incentives for Reconstruction and Rehabilitation. Comment further asserts that Reconstruction should not be limited to replacing the exact number of units (1, 20, 38).

Obsolete Public Housing that is demolished is replaced with HUD mixed finance housing developments on sites that are underutilized with very low density developments. Housing Authorities and the very low income residents they serve should not be penalized by excluding a mixed finance development proposing to increase the number of demolished units from the definition of Reconstruction as well as their eligibility for QCP scoring (5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55).

Additional comment suggests that if a proposed development involves the rehabilitation of an existing residential development, but part of the apartments' buildings have been fire damaged or basically need to be torn down to the ground and rebuilt, while the other portions did not require demolishing, the scenario would not qualify as Reconstruction as currently drafted (37).

Staff Response:

This definition was written to ensure that the QAP does not provide incentives to increase density on a piece of land. Therefore, staff does not recommend a change to this definition to allow for an increase in units above the original total number of units. However, staff does recommend the following change to the definition to allow for scenarios with partial demolition:

(75) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the re-construction of the Units on the Development Site. Developments proposing adaptive re-use or proposing to increase the total number of Units in the Existing Residential Development are not considered Reconstruction.

Board Response:

Accepted staff's recommendation.

§49.3(92) - Urban/Exurban (41), Page 11 of 69

Comment:

Comment was received that asserts that because there are cities defined as rural areas located in large MSA's that need and can justify developments in excess of 76 units, these developments should receive the Exurban scores and be funded from the Urban/Exurban allocation. This recommendation requests to add an additional sentence that states, "A development located in a Rural area as defined in Section 49.3 (81) that exceeds 76 units if involving new construction (41)."

Staff Response:

Staff recommends no change. This rule is based on §2306.6702 of Texas Government Code which defines a Rural Area and the Department has no authority to make this change.

Board Response:

Accepted staff's recommendation.

§49.5(a)(8) - Ineligibility (3, 11, 5, 39, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53), Page 12 of 69

Comment:

Comment suggests that this rule only apply to New Construction, not Reconstruction or Rehabilitation. The comment further asserts that the 3-year rule is designed to protect a pre-existing HTC development until it has the opportunity to stabilize. A New Construction project adds to the existing supply of housing units, and therefore creates competition that the developer of the pre-existing HTC development may not have anticipated in assessing the demand for the pre-existing HTC development. Reconstruction and Rehabilitation, however, are the replacement or upgrading of previously-existing housing units, and neither concept permits an increase in the number of the units originally on the reconstructed or rehabilitated site. Accordingly, Reconstruction and Rehabilitation projects are not adding to the housing supply and are simply upgrading units that should have already been taken into consideration when the pre-existing HTC development was planned. Making the 3-year rule apply to Reconstruction and Rehabilitation projects only serves to sentence the existing occupants of those projects to additional time spent in below-standard housing. Additionally, to the extent that Reconstruction or Rehabilitation requires that existing tenants be relocated, such developments could help the stabilization of the pre-existing HTC development by sending displaced tenants to it (3, 11, 5, 39, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53).

Staff Response:

Staff appreciates the significant comment received and recommends the following language:

(8) The Applicant proposes to construct a new development proposing New Construction (excluding New Construction of non-residential buildings) that is located one linear mile (measured by a straight line on a map) or less from a Development that: (§2306.6703(a)(3))

(A) Serves the same type of household as the new development, regardless of whether the development serves families, elderly individuals, or another type of household (Intergenerational Housing is not a type of household as it relates to this restriction);

Board Response:

Accepted staff's recommendation.

§49.5(b)(2) and (3) - Disqualification and Debarment (Board Amendment), Pages 13 of 69

Board Response:

The Board amended the proposed language based on public comment received in the Board meeting so that only entities with controlling interest in the Development who are in Material Noncompliance are ineligible. The amended language is as follows:

(2) The Applicant, Development Owner, Developer or Guarantor or anyone that has Controlling ownership interest in the Development Owner, Developer or Guarantor that is active in the ownership or Control of one or more other rent restricted rental housing properties in the state of Texas administered by the Department is in Material Noncompliance with the LURA (or any other document containing an Extended Housing Commitment) or the program rules in effect for such property as further described in §60 of this title on May 1, 2007 or for Tax-Exempt Bond Developments or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than 30 days after Volume III of the application is submitted; (§2306.6721(c)(3)) or

(3) The Applicant, Development Owner, Developer or Guarantor or anyone that has Controlling ownership interest in the Development Owner, Developer or Guarantor that is active in the ownership or Control of one or more other rent restricted rental housing properties outside of the state of Texas has an incidence of Material Noncompliance with the LURA or the program rules in effect for such tax credit property as further described in Chapter 60 of this title on May 1, 2007 or for Tax-Exempt Bond Developments or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than 30 days after Volume III of the application is submitted;

§49.5(b)(10) - Disqualification and Debarment (1, 3, 38, 54), Pages 13 of 69

Comment:

This new provision disqualifies Applicants, Development Owners, Developers, Guarantors and Affiliates of an entity whose pre-development loan is not prepaid by the time of commitment or Bond closing. Comment asserts that the issuance of a Commitment Notice does not necessarily bring any funding to repay a pre-development loan. Additionally, pre-development loans are often necessary to purchase the site in time for Carryover (3). Comment therefore recommends this section require that pre-development loans be repaid at the time of construction financing or equity closing, whichever is the first to occur (1, 3, 38, 54). For 4% HTC developments, the commenter concurs that Bond closing is the appropriate time to have the pre-development loan paid off (3, 39, 54).

Staff Response:

In an effort to initiate activities to reduce the level of risk of the Department's assets, this mechanism is meant to further monitor the financial performance for previously funded developments and ensure a minimal risk and high return for pre-development loans. Therefore, staff recommends this section not be deleted. However, staff concurs that this section should be revised so that pre-development loans be repaid at the time of carryover for Competitive Tax Credit Developments and that the deadline remain for Tax Exempt Bond Developments. Therefore, staff recommends the following language:

(10) The Applicant, Development Owner, Developer, Guarantor, or any Affiliate of such entity whose pre-development award from the Department has not been repaid for the Development at the time of Carryover Allocation or Bond closing.

Board Response:

Accepted staff's recommendation.

§49.6(d) - Credit Amount (20), Page 15 of 69

Comment:

One Comment recommends altering the $1.2 Million restriction to not include any 4% acquisition credits received. Therefore, an applicant could receive an award of $1.2 million in 9% construction tax credits, and still be eligible to receive 4% acquisition credits over the $1.2 Million limit (20).

Staff Response:

At the August 30, 2006 Board meeting, there was a discussion relating to this $1.2 Million maximum. The Board indicated that it did not want to increase the $1.2 Million limitation in the 2007 Draft QAP, but instead encouraged comment during the comment period relating to this maximum limitation for the Board's

consideration at the November 9, 2006 meeting. There were no comments received during the comment period requesting this limitation be increased or stricken. The only comment that was received was during the discussion at the August 30, 2006 Board meeting (and is reflected in the comment above). Due to the lack of comment requesting an increase to the $1.2 Million limitation, or support for comment received at the August 30, 2006 meeting, staff proposes no change to this section.

Board Response:

Accepted staff's recommendation.

§49.6(e)(4) - Limitation on Size of Developments (5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55), Page 15 of 69

Comment:

Comment asserts that the proposed draft prevents a second phase or adjacent development from exceeding the number of units demolished in a Reconstruction development unless the first phase is completed and stabilized for six months. Comment recommends staff revise the language to waive this restriction in a number not to exceed the original units being replaced unless a Market Study supports the absorption of additional units, and to delete the six months restriction (5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55).

Staff Response:

Staff concurs with the recommendation, although it does not concur with the language proposed in the public comment. Staff proposes language as follows, which is consistent with the comment received:

(4) For those Developments which are a second phase or are otherwise adjacent to an existing tax credit Development unless such proposed Development is being constructed to provide replacement of previously existing affordable multifamily units on its site (in a number not to exceed the original units being replaced, unless a market study supports the absorption of additional units) or that were originally located within a one mile radius from the proposed Development, the combined Unit total for the Developments may not exceed the maximum allowable Development size, unless the first phase has been completed and has attained Sustaining Occupancy (as defined in §1.31 of this title) for at least six months.

Board Response:

Accepted staff's recommendation.

§49.6(f) - Limitation on the Location of Developments (3), Pages 15 and 16 of 69

Comment:

This section shows a proposed insertion of "or" at the end of the subsection. Comment suggests that the insertion appears to be inappropriate and creates confusion regarding whether or not a Development must meet both the 1-mile rule and §49.6(g), which is a new rule limiting development in a census tract with more than 30% HTC units per total households (3).

Staff Response:

Staff concurs and recommends the "or" be deleted.

Board Response:

Accepted staff's recommendation.

§49.6(g) - Limitations of Developments in Certain Census Tracts (1, 18, 35, 38, 54), Pages 16 of 69

Comment:

Comment suggests that the housing tax credit units/number of households ratio does not tell enough of the story and is not an adequate measure of saturation or concentration. Further, the commenter asserts that it is not a feasible expectation to have a municipality approve a development before the April deadline stipulated in this section. Typical developments often do not have all of the moving parts of financing and costs nailed down until July. The municipality would have to be working on draft pro-formas in February/March. Comment suggest modifying this provision to include a formal statement from the city indicating that the subject development is in compliance with the municipality's concentration policy and that the housing tax credit units/number of households ratio does not tell enough of the story and is not an adequate measure of saturation or concentration (35).

Other comment is supportive of this attempt to get more geographical dispersion of units (54). However, the commenting group believes it should be tried first in the major metropolitan areas with populations of greater than 1,000,000, where the problem seems more pervasive. Additionally, this commenter believes that where a City or County already has a Concentration Policy (such as Houston and Harris County), then the local policy should preempt the need for a resolution (1, 38). Comment received in the August 30, 2006 Board meeting proposed and supports the draft language limiting the restriction to areas with populations greater than 100,000 (18).

Staff Response:

Staff concurs that the proposed language will limit over-saturation of affordable units by restricting new construction of Developments located in a census tract that has more than 30% Housing Tax Credit Units per total households in the census tract. Because the governing body of the appropriate municipality or county containing the Development may specifically allow the award of tax credits in the form of a resolution by April 2, 2007, this would be enough time for the governing body if an applicant meets their due diligence in working with the city as the site becomes available. The April deadline is consistent with other local resolution requirements throughout the QAP.

Based on the current data available, of the 1,010 census tracts in the state, only 43 census tracts would fall in this category. These 43 tracts are highlighted in the attached "§49.6(g) Census Tracts 2007 HTC Site Demographic Characteristics Report," (the "report"). Please note this report is presented only for informational purposes. The report reflects data accurate as of the date of this posting and does not reflect the 2007 Competitive Tax Credit Awards. The report and updated data will be posted to the Department's website monthly. Applicants will be evaluated pursuant to this section utilizing the report and corresponding data in effect as of March 1, 2007 for competitive HTC applications or for tax-exempt bond applications, at the time Volume 1 is submitted.

Staff recommends no changes to this section.

Board Response:

Accepted staff's recommendation.

§49.6(h) - Limitations of Developments Proposing to Qualify for a 30% Increase in Eligible Basis (22, 35), Page 16 of 69

Comment:

Comment requests that the 30 percent boost remain the same as in past years because the QCT should already have qualified for that extra eligibility 30 percent boost, based on where it is inherently, not that there should be any other criteria associated with the boost in eligible basis (22). Comment suggests that the housing tax credit units/number of households ratio does not tell enough of the story and is not an adequate measure of saturation or concentration (35). Other comment requests the deletion of this section (22).

Staff Response:

Staff recommends no changes to this section because the proposed language will prohibit the 30% increase for Developments proposing new construction in QCTs which have more than 40% Housing Tax Credit Units per total households in the census tract. The language will work to de-concentrate tax credit units in QCTs with over-saturation.

Board Response:

Accepted staff's recommendation.

§49.6(i) - Rehabilitation Costs (22), Page 16 of 69

Comment:

Comment suggests a minimum of $6,000 of rehabilitation hard costs per unit instead of $12,000 because the higher minimum prevents certain affordable housing developments from being able to apply for housing tax credits (22).

Staff Response:

Staff recommends no change. Consistent with national trends and other housing finance agencies, analysis confirms existing rehabilitations generally exceed the $12,000 limit unless they are USDA-RHS, which are already exempt from this requirement. The Department, as a policy, wants to ensure a thorough and significant rehabilitation as it contributes resources.

Board Response:

Accepted staff's recommendation. §49.7(a) - Regional Allocation Formula (4, 8, 19, 24, 27, 28), Pages 16 and 17 of 70

Comment:

Comment to the REA Rules suggests an allocation of credits set-aside which would allow awarded developments from the previous year to automatically be eligible to apply for up to 5% in additional credits at cost certification. Comment did specifically provide comment to this section and did not suggest any specifics on how this suggestion would function within the cycle and award recommendations (4).

Significant comment requests a change to allow any type of additional financing of a rehabilitation or acquisition/rehabilitation of an existing TX-USDA-RHS's 515 Program, if it retains the 515 loan and restrictions, as eligible for the TX-USDA-RHS's set-aside (8, 19, 24, 27, 28).

Staff Response:

As it relates to a request for 5% of additional credits set-aside for additional credits, the Department has no authority to make this change pursuant to §2306.111(d) of Texas Government Code, which says that the QAP may only allow set-asides required by state or federal statue. Staff appreciates the comment from the rural areas and recommends the following language:

...New Construction Developments financed through TX-USDA-RHS's 538 Guaranteed Rural Rental Housing Program will not be considered under this set-aside. Any Rehabilitation or Reconstruction of an existing 515 development that retains the 515 loan and restrictions, regardless of the source or nature of additional financing, will be considered under this set-aside....

Board Response:

The Board amended staff's recommendation to include all Developments financed through TX-USDA-RHS's 538 Program as eligible for the USDA Set-Aside. The amended language is as follows:

(d)... Developments financed through TX-USDA-RHS's 538 Guaranteed Rural Rental Housing Program will be considered under this set-aside. Any Rehabilitation or Reconstruction of an existing 515 development that retains the 515 loan and restrictions, regardless of the source or nature of additional financing, will be considered under this set-aside. Commitments of 2007 Housing Tax Credits issued by the Board in 2006 will be applied to each Set-Aside, Rural Regional Allocation, Urban/Exurban Regional Allocation and TX-USDA-RHS Allocation for the 2007 Application Round as appropriate.

§49.7(b) - Set-Asides (14, 41), Page 17 of 70

Comment:

One comment supports TDHCA giving special attention through the At-Risk Set-Aside (14). Additional comment supports dividing the Dallas (3), Houston (6), Austin (7), and San Antonio (9) regions into an "A" and "B" part to disperse credits throughout the region because the larger cities are concentrated with developments due to having prior year competitive scoring advantages. Many lower income people, who work and utilize the amenities of large Metropolitan Statistical Areas live in smaller adjoining counties and cities. Some of these non-urban communities have significant affordable housing needs, but are not able to compete with the large Metropolitan Statistical Areas for points. Dividing the tax credits into two allocation pools within Regions 3, 6, 7, and 9 will ensure that smaller counties and cities receive their fair share of tax credit allocations (41).

Staff Response:

Staff appreciates positive feedback relating to the At-Risk set-aside. As it relates to splitting particular cities into two additional pots of money, unfortunately, this change would be significant enough to warrant further public comment. In order to truly evaluate the effects of the proposed revisions, staff recommends that further research and discussion occur.

Board Response:

Accepted staff's recommendation.

§49.8(d)(3)(A)(i) - Pre-Application Threshold Criteria Notification Requirements (1, 38, 5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53), Page 18 of 70

Comment:

Significant comment was received that requests a change in the date for submission of request for neighborhood organizations from December 8, 2006, to the same date as the pre-application date. Comment suggests this change because of the assertion that December 8, 2006 is too early for notification and will create unnecessary notifications for projects without site control. The pre-application date is sufficient for the developer's ability to no-

tify and work with neighborhood organizations prior to the application (1, 38, 5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53).

Staff Response:

Staff does not recommend a change to this section. The December 8, 2006 data is for a request of neighborhood information and not the notification. This request is needed to allow enough time for the Developer to receive the information and send the notification on or before the Applicant submits the data.

Board Response:

Accepted staff's recommendation.

§49.9(a) - Application Submission (Administrative), Page 20 of 69

Administrative Change:

In an effort to reflect the current requirement to submit an electronic copy of the complete application, staff proposes the following language, which is consistent with last's year's submission requirements:

(a) Application Submission. Any Applicant requesting a Housing Credit Allocation or a Determination Notice must submit an Application, and the required Application fee as described in §49.20 of this title, to the Department during the Application Acceptance Period. Only complete Applications will be accepted. All required volumes must be appropriately bound as required by the Application Submission Procedures Manual and fully complete for submission and received by the Department not later than 5:00 p.m. on the date the Application is due. A searchable electronic copy of all required volumes and exhibits, unless otherwise indicated in the Application Submission Procedures Manual, must be submitted in the format of a single file presented in the order they appear in the hard copy of the complete Application on a CD-R clearly labeled with the report type, Development name, and Development location is required for submission and received by the Department not later than 5:00 p.m. on the date the Application is due. Only one Application may be submitted for a site in an Application Round. While the Application Acceptance Period is open, Applicants may withdraw their Application and subsequently file a new Application utilizing the original Pre-Application Fee that was paid as long as no evaluation was performed by the Department. The Department is authorized, but not required, to request the Applicant to provide additional information it deems relevant to clarify information contained in the Application or to submit documentation for items it considers to be an Administrative Deficiency, including ineligibility criteria, site and development restrictions, and threshold and selection criteria documentation. (§2306.6708) An Applicant may not change or supplement an Application in any manner after the filing deadline, and may not add any set-asides, increase their credit amount, or revise their unit mix (both income levels and bedroom mixes), except in response to a direct request from the Department to remedy an Administrative Deficiency as further described in §49.3(1) of this title or by amendment of an Application after a commitment or allocation of tax credits as further described in §49.17(d) of this title.

Board Response:

Accepted staff's recommendation.

§49.9(c) - Adherence to Obligations (1, 38), Page 21 of 70

Comment:

Comment suggests that the last sentence in this section is unclear and suggests language which would not penalize Applicants who are requesting extensions for the substantiation of points at the time of commitment (1,38).

Staff Response:

Staff does not recommend this change because it would allow an extension of necessary evidence to substantiate points at Commitment, which the Department does not allow or encourage without this penalty. The Department does recommend an Administrative change which corrects the erroneous language referring to an extension as it relates to amendments. Staff recommends the following language:

(c) Adherence to Obligations. (§2306.6720, General Appropriation Act, Article VII, Rider 8(a)) All representations, undertakings and commitments made by an Applicant in the application process for a Development, whether with respect to Threshold Criteria, Selection Criteria or otherwise, shall be deemed to be a condition to any Commitment Notice, Determination Notice, or Carryover Allocation for such Development, the violation of which shall be cause for cancellation of such Commitment Notice, Determination Notice, or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Development, shall be enforceable even if not reflected in the LURA. All such representations are enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, as stated in the representations and in accordance with the LURA. Effective December 1, 2006, if a Development Owner does not produce the Development as represented in the Application and in any amendments approved by the Department subsequent to the Application, or does not provide the necessary evidence for any points received by the required deadline:

Board Response:

Accepted staff's recommendation.

§49.9(d)(4) - Administrative Deficiencies (1, 38, 4, 20, 5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56), Page 22 of 70

Comment:

Significant comment received requests that staff restore to 5 business days from 3 days and to 7 business days from 5 for deficiency submissions because many times the requests relate to need for information from third party sources and it is difficult to get these documents in the requested time frames (1, 38, 4, 20, 5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 56).

Staff Response:

It is staff's general experience that applicants tend to submit corrections to Administrative Deficiencies on the last possible day for submission, no matter what the deadline is. This not only creates a delay in the processing of the Applications, but it also prevents staff from having the time necessary to work with the Applicant in submitting the correct responses to Departmental requests. Historically, even when Applicants submit their response on the last possible day before losing points or being terminated, there is still the expectation that staff will have the time to review the corrective action and inform the Applicant of uncorrected deficiencies before the deadline.

However, staff recognizes that significant comment requests that staff restore to 5 business days from 3 days and to 7 business days from 5 for deficiency submissions. In an effort to compromise with public comment and staff's needs to ensure that staff

has enough time to review, evaluate feasibility, and accurately award tax credits in an Application round, staff recommends the following language:

(4)...If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department within five business days of the deficiency notice date, then for competitive Applications under the State Housing Credit Ceiling five points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If deficiencies are not clarified or corrected within seven business days from the deficiency notice date, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. If the applicant fully responds to the Administrative Deficiency Notice within the third business day following the deficiency notice date, the Department will review the documentation submitted and contact the Applicant by the end of the fourth business day following the deficiency notice date with guidance on items not clarified or corrected to the satisfaction of the Department. If Administrative Deficiencies are submitted to the Department after the third business day following the deficiency notice date, the Department will not be required to review the documentation submitted until after the 5th day, nor will the Department be required to contact an applicant with guidance on items not clarified or corrected to the satisfaction of the Department until after the 5th day. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period.

Board Response:

The Board amended staff's recommendation to delete the last two underlined sentences (above). The amended language is as follows:

(4)...If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department within five business days of the deficiency notice date, then for competitive Applications under the State Housing Credit Ceiling five points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If deficiencies are not clarified or corrected within seven business days from the deficiency notice date, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period.

§49.9(d)(5)(C) - Subsequent Evaluation of Prioritized Applications and Methodology (1, 18, 31, 38), Pages 22 and 23 of 70

Comment:

Comment suggests that as worded, this section is confusing and would penalize rural regions where the top scoring Application exceeds credits, and credits might go to urban area instead (1, 18, 31, 38). The comment requests that this section be stricken (1, 38).

Additional comment received strongly supports the change in this paragraph, allowing unused funds in a sub-region to stay within its same region first, before being re-allocated to another region. The comment asserts that the language is more in line with the intent of the original language of the Regional Allocation Formula Bill authored by Senator Shapleigh from El Paso and believes a support letter from him regarding this language change will be forthcoming (31).

Staff Response:

Staff does not agree that this section would penalize Rural Applications. In response to the comment, staff applied this draft methodology to the 2006 Applications. Interestingly, had this methodology been applied in 2006, the award recommendations to the Board would have been exactly the same as staff's actual recommendations to the Board. Consistent with the actual awards made in 2006, 10 out of the 13 Applications awarded to regions with a shortfall in credits were Rural. Staff believes that this is consistent mathematically, in that the regions with the greatest shortfall of credits will most often be the sub-regions with the smallest pot of money, which is most often Rural regions. This language was included in the draft after comment was received requesting the methods of allocation be put in writing in order to ensure transparency in the award process.

Staff concurs with other comment that the language is consistent with the intent of the Regional Allocation Formula. Staff recommends no changes to this section.

Board Response:

Accepted staff's recommendation.

§49.9(d)(6)(B)(ii) - Underwriting Evaluation Criteria Regarding Developer Fee (1, 38, 3, 4, 7, 19, 24, 26, 27, 29, 35, 39, 5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53), Pages 23 and 24 of 70

Comment:

Significant comment was received which asserted that this section prohibits the paying of a developer's fee on the acquisition portion of an acquisition/rehabilitation, which goes against the overall preference for preserving or rehabilitating existing complexes in Texas. Likewise, it is not apparent why the developer of a 9% HTC development should not be paid for services rendered in locating an appropriate housing site for rehabilitation. Comment requests that this new provision, along with corresponding new language in Underwriting Guidelines §1.32(e)(7), be eliminated (1, 38, 3, 4, 19, 24, 26, 27, 29, 35, 39, 5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53). Comment was also received requesting clarification of how the limitations would apply in an adaptive re-use situation (7).

Additional comment stated that small developments would benefit from any incentive such as the added language in this section as it related to a 20% developer fee (27).

Staff Response:

Staff made an administrative error in the wording of this section which resulted in unintended implications that the proposed changes would prohibits the paying of a developer's fee on the acquisition portion of a Development. It should be noted that the intention of the proposed language was to reflect the actual methodology of computing the developer fee limitation, while also providing an incentive to small Developments (which is a recommended practice of National Council of State Housing Agencies (NCSHA)). The error was noted at the August Board meeting, and although the Board did not amend this section of the proposed draft, the Board did acknowledge the error and encouraged public comment. Therefore, staff recommends the following language, which is consistent with public comment and staff's original intention of the draft language:

(B) The Department will reduce the Applicant's estimate of Developer's and/or Contractor fees in instances where these exceed the fee limits determined by the Department. In the instance where the Contractor is an Affiliate of the Development Owner and both parties are claiming fees, Contractor's over-

head, profit, and general requirements, the Department shall be authorized to reduce the total fees estimated to a level that it determines to be reasonable under the circumstances. Further, the Department shall deny or reduce the amount of Housing Tax Credits allocated with respect to any portion of costs which it deems excessive or unreasonable. Excessive or unreasonable costs may include developer fee attributable to Related Party acquisition costs. The Department also may require bids or Third Party estimates in support of the costs proposed by any Applicant. The Developer's fee limits will be calculated as follows:

(i) New construction pursuant to §42(b)(1)(A) U.S.C, the developer fee cannot exceed 15% of the project's Total Eligible Basis, less developer fees, or 20% of the project's Total Eligible Basis, less developer fees if the Development proposes 49 total Units or less; and

(ii) Acquisition/rehabilitation developments that are eligible for acquisition credits pursuant to §42(b)(1)(B) U.S.C, the acquisition portion of the developer fee cannot exceed 15% of the existing structures acquisition basis, less developer fee, or 20% of the project's Total Eligible Basis, less developer fees if the Development proposes 49 total Units or less, and will be limited to 4% credits. The rehabilitation portion of the developer fee cannot exceed 15% of the total rehabilitation basis, less developer fee, or 20% of the project's Total Eligible Basis, less developer fees if the Development proposes 49 total Units or less.

Board Response:

Accepted staff's recommendation.

§49.9(e)(2) - Evaluation Process for Tax Exempt Bond Development Applications (1, 38, 57), Pages 24 of 70

Comment:

Comment opposes the daily penalty fee of $500 and requests its removal (1, 38, 57).

Staff Response:

Staff recommends no change to this section. The penalty fee assessed to bond transactions that have deficiencies that remain outstanding after 5 business days was included in the draft 2007 QAP and Bond rules because historically deficiencies have not been submitted by the deadline stated in the deficiency notice. Because bond transactions have a limited timeframe in which to have the threshold and underwriting reviews completed it is imperative that all outstanding deficiency items be resolved within the stated time frame to allow sufficient time for underwriting to occur. Rather than automatic termination (which will not be done until the 10th business day) the imposed penalty fee was a solution that would not jeopardize the bond reservation, and would still allow the Application to stay on track to be presented at the scheduled Board meeting date, while sending a clear message that these delays are strongly discouraged.

Board Response:

Accepted staff's recommendation.

§49.9(h)(4)(A)(ii)(VI) - Threshold Criteria - Certification of Amenities (31, 59), Page 27 of 70

Comment:

Comment was received in support of the requirement of 911 telephones in exchange for the requirement of public telephones because they have found that the public telephones on our existing sites are often used for drug-related activities and wish we could replace them with 911 phones (31, 59).

Staff Response:

Staff appreciates the positive comment. Staff does not recommend the proposed change. However, staff does recommend the following administrative clarification.

(A) A certification of the basic amenities selected for the Development. All Developments, must meet at least the minimum threshold of points. These points are not associated with the selection criteria points in subsection (i) of this section. The amenities selected must be made available for the benefit of all tenants. If fees in addition to rent are charged for amenities reserved for an individual tenant's use, then the amenity may not be included among those provided to satisfy this requirement. Developments must provide a minimum number of common amenities in relation to the Development size being proposed. The amenities selected must be selected from clause (ii) of this subparagraph and made available for the benefit of all tenants. Developments proposing Rehabilitation or proposing Single Room Occupancy will receive 1.5 points for each point item. Applications for non-contiguous scattered site housing, including New Construction, Reconstruction, Rehabilitation, and single-family design, will have the threshold test applied based on the number of Units per individual site, and must submit a separate certification for each individual site under control by the Applicant. Any future changes in these amenities, or substitution of these amenities, must be approved by the Department in accordance with §49.17(d) of this title and may result in a decrease in awarded credits if the substitution or change includes a decrease in cost, or in the cancellation of a Commitment Notice or Carryover Allocation if all of the Common Amenities claimed are no longer met.

Board Response:

Accepted staff's recommendation.

§49.9(h)(4)(A)(ii)(XI) - Threshold Criteria - Certification of Amenities (1, 38, 3, 5, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53), Page 27 of 70

Comment:

Comment was received requesting that this section be changed based on the experience of owners and property managers in the operations of business centers. In a residential context, it is unlikely that you would need more than 1 printer for every 10 computers, if properly networked. Further, more and more residents have personal computers (1, 38, 3). Comment also suggests that faxes are outdated and no longer used (41). Significant other comment requests that this change to 1 computer for every 25-50 units, 1 fax machine for every 75 units and 1 printer for every 3 computers (5, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53).

Staff Response:

Staff appreciates the comment and recommends the following changes to the current language:

(XI) Equipped and functioning business center or equipped computer learning center with 1 computer for every 30 Units proposed in the Application, 1 printer for every 3 computers (with minimum of one printer), and 1 fax machine (2 points);

Board Response:

Accepted staff's recommendation.

§49.9(h)(4)(B)(i) - Threshold Criteria - Certification of Amenities (1, 38, 10), Page 27 of 70

Comment:

Comment was received requesting the language be changed based on feedback of owners/developers with recommendations from the communications industry (1, 38).

Additional comment asserts that this item is unnecessary for elderly developments, where residents do not often own their own computers. The comment requests that this item be deleted for elderly developments (10).

Staff Response:

Staff does not recommend the exemption of elderly developments from this threshold item because many elderly persons enjoy and require computer access as much as non-elderly persons. However, staff does recommend the following language, which is consistent with comment received:

(i) All New Construction Units must be wired with 6 pair CAT5e wiring or better to provide phone and data service to each unit and wired with COAX cable to provide TV and high speed internet data service to each unit;

Board Response:

Accepted staff's recommendation.

§49.9(h)(4)(F) - Threshold Criteria - Certification of Amenities (31), Page 28 of 70

Comment:

Comment was received which disagrees with striking the language in this paragraph that summarizes the Uniform Federal Accessibility Standards (UFAS) standards, because having the summary notes in the paragraph are a reminder to what our obligations are. (31, 59).

Staff Response:

Staff recommends no change to this section. Staff does not recommend that the QAP exceed the citation to ensure that the Applicants fully review the statute instead of relying on the Department's summary.

Board Response:

Accepted staff's recommendation.

§49.9(h)(6)(G) - Threshold Criteria - Site Work Costs (1, 38, 36), Page 29 of 70

Comment:

Comment received requests that the $7,500 limit for site work be raised to a higher amount of $10,000 per unit. This $7,500 per unit threshold was first put in place with the 2003 Real Estate rules. Site costs have increased dramatically and it is time to raise this limit (1, 38, 36)

Staff Response:

Staff does not recommend a change. Sitework costs claimed at cost certification for 41 new construction developments that placed in service in 2004 and 2005 indicate a mean of $6,200 and a median of $6,400 per unit. Fifteen (37%) had site work costs above $7,500 per unit. These figures indicate $7,500 per unit is still a good benchmark for requiring additional third party documentation. This safe harbor limit at $7,500 per unit is intended to account for more than the average historical site work cost on a per unit basis. Anything over that amount will still be accepted as long as substantiation for the significantly higher than average site work cost is provided.

Board Response:

The Board denied staff's recommendation and raised the limit to $9,000, consistent with public comment. The amended language is as follows:

(G) If projected site work costs include unusual or extraordinary items or exceed $9,000 per Unit, then the Applicant must provide a detailed cost breakdown prepared by a Third Party engineer or architect, and a letter from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis and which ones may be ineligible.

§49.9(h)(4)(M) - Threshold Criteria - Certification of Background Check (31, 59), Page 28 of 70

Comment:

Comment was received which opposes the requirement of criminal background checks on all tenants. The commenter believes that this creates a huge liability for property owners and property managers, especially when the Department is not stipulating what types of convicted criminals are prevented from living in our units. If the Department wishes to make individuals convicted of certain crimes ineligible as tenants in the program, then the rule should state that. As a compromise, comment suggests a rule to have a policy of running sex offender checks on prospective tenants and rejecting any convicted sex offenders from our properties (31, 59).

Staff Response:

Staff recommends no change to this section because, while the Department believes that it is good practice to run a criminal background check, it does not wish to micro-manage how specific management companies wish to address criminal backgrounds in their leasing criteria.

Board Response:

Accepted staff's recommendation.

§49.9(h)(7)(A) (iii) - Threshold Criteria - Evidence of Readiness to Proceed (3, 15, 39), Page 30 of 69

Comment:

This year language has been added stating that for Tax Exempt Bond Developments, site control must be valid for 150 days after the Application Acceptance Period or through the full reservation and allocation period, whichever is longer. Comment suggests that this period of site control is extremely difficult to achieve with a Rehabilitation project. Owners of tenanted developments are generally unwilling to contractually agree to keep their properties off the market for such a long period of time. Comment requests the deletion of the proposed insertion and return to the language of the 2006 QAP (3). Other comment objects to the current language in the QAP regarding the requirement for site control for bond deals because they feel that this additional requirement will be harmful to developers that have chosen good sites that are highly sought after and particularly damaging to developers attempting to close on acquisition/rehabilitation deals where site control is always an issue. Comment does not object to this same requirement in TDHCA's proposed Bond rules as they feel TDHCA should be allowed to dictate their own multi-family rules; just as the local HFCs want the ability to manage their individual programs (15).

Staff Response:

Staff appreciates the input and recommends the following change to this language:

(iii) A contract for sale, an exclusive option to purchase which is valid for the entire period the Development is under consideration for tax credits. For Tax Exempt Bond Developments site control must be valid through December 1, 2006 with option to extend through March 1, 2007 (Applications submitted for lottery) or 90 days from the date of the bond reservation with the option to extend through the scheduled TDHCA Board meeting. The potential expiration of site control does not warrant the Application being presented to the TDHCA Board prior to the scheduled meeting. If the acquisition can be characterized as an identity of interest transaction as described in §1.32(e)(1)(B), (I) and (II) of this title must be provided (not required at Pre-Application):

Board Response:

Accepted staff's recommendation, and further amended the section consistent with public comment received in the Board meeting. It should be noted that the amendment is consistent with how this section was previously interpreted. The amended language clarifies that documentation required in identity of interest transactions applies to all Applicants, regardless of the type of site control that was submitted. The amended language is as follows:

(7) Evidence of readiness to proceed as evidenced by at least one of the items under each of subparagraphs (A) - (D) of this paragraph:

(A) Evidence of Property control in the name of the Development Owner. If the evidence is not in the name of the Development Owner, then the documentation should reflect an expressed ability to transfer the rights to the Development Owner. All of the sellers of the proposed Property for the 36 months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development team must be identified at the time of Application (not required at Pre-Application). One of the following items described in clauses (i) - (iii) of this subparagraph must be provided, and if the acquisition can be characterized as an identity of interest transaction as described in §1.32(e)(1)(B), items described in (iv) of this subparagraph must also be provided:

(i) A recorded warranty deed with corresponding executed settlement statement, unless required to submit items under clause iv) of this subparagraph; or

(ii) A contract for lease (the minimum term of the lease must be at least 45 years) which is valid for the entire period the Development is under consideration for tax credits; or

(iii) A contract for sale, an exclusive option to purchase which is valid for the entire period the Development is under consideration for tax credits. For Tax Exempt Bond Developments site control must be valid through December 1, 2006 with option to extend through March 1, 2007 (Applications submitted for lottery) or 90 days from the date of the bond reservation with the option to extend through the scheduled TDHCA Board meeting. The potential expiration of site control does not warrant the Application being presented to the TDHCA Board prior to the scheduled meeting.

(iv) If the acquisition can be characterized as an identity of interest transaction as described in §1.32(e)(1)(B), (I) and (II) of this title must be provided (not required at Pre-Application):...

§49.9(h)(8)(B) - Threshold Criteria - Signage on Property or Alternative (15, 16), Page 34 of 70

Comment:

As it relates to the mailing alternative to signage for Tax Exempt Bond Developments, new language was added to this section which clarifies that the date, time and location of the bond public hearing must be included in the notification and be mailed within thirty days of the Department's receipt of the Volume I and II or thirty days prior to the bond public hearing date, whichever is earlier. Comment requests flexibility and the deletion of the new language because the required timing to mail the notifications could be prior to the date that hearing date has been scheduled (15, 16).

Staff Response:

Staff concurs with the comment and recommends deleting the new language relating to the written notifications at the bottom of the section, and instead adding the following language:

(B) Signage on Property or Alternative. A Public Notification Sign shall be installed on the Development Site prior to the date the Application is submitted. Scattered site Developments must install a sign on each Development Site. For Tax-Exempt Bond Developments, regardless of the Priority of the Application or the Issuer, the sign must be installed within thirty (30) days of the Department's receipt of Volumes I and II. The date, time and location of the bond public hearing must be included on the sign no later than thirty (30) days prior to the scheduled public hearing. Evidence submitted with the Application must include photographs of the site with the installed sign. The sign must be at least 4 feet by 8 feet in size and located within twenty feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day that the Board takes final action on the Application for the Development. The information and lettering on the sign must meet the requirements identified in the Application. For Tax-Exempt Bond Developments, regardless of the issuer, the Applicant must certify to the fact that the sign was installed within 30 days of submission and the date, time and location of the bond hearing is indicated on the sign at least 30 days prior to the date of the scheduled hearing. As an alternative to installing a Public Notification Sign and at the same required time, the Applicant may instead, at the Applicant's option, mail written notification to those addresses described in either clause (i) or (ii) of this subparagraph. This written notification must include the information otherwise required for the sign as provided in the Application. If the Applicant chooses to provide this mailed notice in lieu of signage, the final Application must include a map of the proposed Development site and mark the distance required by clause (i) or (ii) of this subparagraph, up to 1,000 feet, showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. If the option in clause (i) of this subparagraph is used, then evidence must be provided affirming the local zoning notification requirements.

Board Response:

Accepted staff's recommendation.

§49.9(h)(9)(C) - Threshold Criteria - State Previous Participation (9), Page 35 of 69

Comment:

Comment received asserts that the current language captures all entities (and at least implies Persons) regardless of ownership interest, specifically very minor owners, and is inconsistent with the Principal definitions under corporations and limited liability companies as well as the 10% requirement for Persons receiving more than 10% of the Developer Fee (9):

Staff Response:

Staff recommends no change to this section because the full information is needed to perform a material noncompliance review, pursuant to Portfolio Management and Compliance (PMC) Rules.

Board Response:

Accepted staff's recommendation.

§49.9(h)(12)(C) - Threshold Criteria - Applicants Applying for Acquisition Credits (1, 38, 4, 26, 5, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53), Page 36 of 69

Comment:

This section requires as a part of threshold requirements a legal opinion that the proposed acquisition meets the requirements of Section 42. Comment strongly opposes this section and requests its deletion because one can not obtain a hypothetical legal opinion based upon future events. The commenters assert that no attorney will issue an opinion in February that a transaction to be closed many months later complies with Section 42 of the Code (1, 38, 4, 26, 5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53).

Staff Response:

Staff concurs with the comment and recommends deleting the new language. The section will read:

(12) Applicants applying for acquisition credits must provide must provide

(A) An appraisal meeting the requirements of subparagraph (14)(D) of this subsection, and

(B) An "Acquisition of Existing Buildings Form."

Board Response:

Accepted staff's recommendation.

§49.9(h)(13) - Threshold Criteria - Financial Statement and Credit Release (9), Pages 36 and 37 of 69

Comment:

Comment received asserts that the current language captures all entities (and at least implies Persons) regardless of ownership interest, specifically very minor owners, and is inconsistent with the Principal definitions under corporations and limited liability companies as well as the 10% requirement for Persons receiving more than 10% of the Developer Fee (9):

Staff Response:

Staff appreciates the comment and concurs. Staff recommends the following change to this section:

(13) Evidence of Financial Statement and Authorization to Release Credit Information. The financial statements and authorization to release credit information must be unbound and clearly labeled. A "Financial Statement and Authorization to Release Credit Information" must be completed and signed for any General Partner, Developer or Guarantor and any Person that has an ownership interest of ten percent or more in the Development Owner, General Partner, Developer, or Guarantor. Nonprofit entities, public housing authorities and publicly traded corporations are only required to submit documentation for the entities involved; documentation for individual board members and executive directors is not required for this exhibit.

Board Response:

Accepted staff's recommendation.

§49.9(h)(14)(C) - Threshold Criteria - Property Condition Assessment (26), Page 37 of 69

Comment:

Comment received asserts that the current language states that a property condition assessment for a rehabilitation property must be dated within 90 days of submitting the Application. Comment suggests that the QAP go back to the six month date because if not, Applicants will be required to get two property condition assessments, one when we start analyzing the proposed acquisition and then redo it again within the 90 day limit.

Staff Response:

Staff concurs with comment and proposes last year's language:

(ii) Dated not more than 6 months prior to the first day of the Application Acceptance Period; and

Board Response:

Accepted staff's recommendation.

§49.9(i) - Selection Criteria - General (13, 24, 25, 27, 57), Pages 38-51 of 69

Comment:

Comment was received that referred to a panel involving syndicators at a recent National Affordable Home Builders (NAHB) conference, in which data was provided that the large majority of nonperforming properties were rehabilitations. Comment questions if providing additional points for rehabilitation is in the best interest of the program (57).

Comment was also received that requested a new selection criteria item worth 7 points for eligible Rural Set Aside Properties located in cities whose population is less than 5000 (2000 census) and are not located within an MSA or SMSA, and a separate item worth 7 points for eligible Rural Set Aside properties located in cities who have not received a tax credit award in at least 10 years (13, 24, 25, 27).

Staff Response:

Staff appreciates the comment relating to rehabilitation incentives, and would like to review some of the data referred to in the comment. However, the Department believes that an increase emphasis on Rehabilitation serves many purposes including deconcentration and revitalization.

Staff also appreciates the suggested new selection items relating to Rural Developments. Unfortunately, this change would be significant enough to warrant further public comment. In order to truly evaluate the effects of the proposed revisions, staff recommends that further research and discussion occur in anticipation of the 2008 QAP.

Board Response:

Accepted staff's recommendation.

§49.9(i)(1) - Selection Criteria - Financial Feasibility of the Development (1, 38), Pages 38 and 39 of 69

Comment:

Comment requests the requirement of a 15 year proforma rather than a 30 year proforma because this conforms with the industry standards in the underwriting of tax credit transactions.

Staff Response:

Staff concurs with comment and recommends the following changes to the QAP:

(1) Financial Feasibility of the Development. Financial Feasibility of the Development based on the supporting financial data required in the Application that will include a Development underwriting pro forma from the permanent or construction lender. (§2306.6710(b)(1)(A)) Applications may qualify to receive 28 points for this item. No partial points will be awarded. Evidence will include the documentation required for this exhibit, as reflected in the Application submitted, in addition to the commitment letter required under subsection (h)(7)(C) of this section. The supporting financial data shall include:

(A) A fifteen year pro forma prepared by the permanent or construction lender:

(i) Specifically identifying each of the first five years and every fifth year thereafter;

(ii) Specifically identifying underlying assumptions including, but not limited to general growth factor applied to income and expense; and

(iii) Indicating that the Development maintains a minimum 1.15 debt coverage ratio throughout the initial fifteen years proposed for all third party lenders that require scheduled repayment; and

(B) A statement in the commitment letter indicating that the lender's assessment finds that the Development will be feasible for fifteen years.

Board Response:

Accepted staff's recommendation.

§49.9(i)(2) - Quantifiable Community Participation, General (1, 38, 4, 6, 18), Pages 39-41 of 70

Comment:

While comments applaud the addition of QAP §49.9(i)(16), which grants up to 7 points for Applications in areas that have no organizations meeting the definition of "neighborhood organization" in the QAP, it does not go far enough in leveling the playing field between Applications that have neighborhood organizations and Applications that do not. Assuming an Applicant meets the requirements of §49.9(i)(16), they would receive a maximum of 19 points (12 plus 7), while an Application with a neighborhood organization would receive 24 points. While the incentive for fraud in neighborhood organization creation and the disincentive for developing in rural areas without "neighborhood organizations" may decrease, it will not be totally eliminated. In creating §2306.6711(b)(2), the Legislature did not intend to penalize Applications from areas without neighborhood organizations, rather it sought to penalize Applications with neighborhood opposition (1, 38, 4, 6, 18). There is no statutory mandate that scoring for an item must start at zero points and rise upward; scoring can start at 24 and reduce downward with opposition and still meet the requirements of §2306.6711(b)(2). To fulfill legislative intent and avoid discrimination against certain geographic areas, TDHCA should eliminate §49.9(i)(16) and amend §49.9(i)(2)(B)(iii) to read as follows (1, 38, 4):

In general, letters that meet the requirements of this paragraph and:

(I) establish at least one reason for support will be scored +24 points;

(II) establish at least one reason for opposition will be scored zero points

(III) that do not establish a reason for support or opposition or that are unclear will be considered ineligible and not scored;

(iv) Applications for which there are multiple eligible letters received, an average score will be applied to the Application;

(v) Applications for which no letters from neighborhood organizations are scored will receive a score of +24 points.

Staff Response:

The Department does not believe that it can allow points for QCP if a neighborhood organization does not exist because the statute is clear that these points are for QCP from neighborhood organizations. Section 2306.6710(b)(1)(B) of Texas Government Code indicates that the second most important criteria to be considered is "quantifiable community participation with respect to the development evaluated on the basis of written statements from any neighborhood organization...which the development is to be located and whose boundaries contain the proposed development site;" (emphasis added).

This language clearly indicates that there should be a neighborhood organization that comments to qualify for these points. Since Texas Attorney General Opinion GA-0208 limited negative points for only legislative comments, then on a positive scale from 0 to 24, 12 would be the neutral for no comment with 0 being a negative implication. Under this scenario, the developments within the boundaries of a neighborhood association would receive the highest points if supported by the neighborhood association as is indicated in statutory construction.

Staff believes that by allowing for more points for additional reasons offered by the neighborhood organizations reflects the "evaluation" component as opposed to a simple support or not support letter.

Board Response:

Accepted staff's recommendation.

§49.9(i)(2)(A) - Quantifiable Community Participation (1, 38), Pages 39 and 40 of 70

Comment:

This year's draft QAP requires all QCP letters to be postmarked no later than March 1, 2007 if a pre-Application was submitted for the Application. If no Pre-Application was submitted, the deadline is April 2, 2007. Comment requests the date for submission of these letters be April 2, 2007 for all Applications, rather than March 1, 2007, to allow a period of time after the Application has been finalized to meet with any organizations (1, 38).

Staff Response:

Staff recommends no change to this section. Staff strongly believes that the March 1, 2007 deadline is imperative to ensure that staff has enough time to review, evaluate feasibility, and accurately award tax credits in an Application round. Neighbor-

hood organizations will have had sufficient notification and time to provide input.

It should be noted that in 2006, the final scores for Applications varied by very little in each region and often came down to tie-breakers in order to determine which Application would receive an award. In fact, the average point difference between an awarded Application, and an unawarded Application was only 2 points. The average median self score for Applications was 147 points, but the average medium final score awarded after points for QCP and elected officials were evaluated and attributed was 168 points, which is an average 21 point difference from self score to final score for Applications.

It is anticipated for 2007 the average point difference between awarded and unawarded Applications will be similar to 2006, and the median difference between self score and final score will be even greater than 2006 because of the additional 7 points that are contingent on QCP scores. Therefore, scores must be finalized as early as possible in order to adequately identify Applications as "priority" to ensure that staff has enough time to review and evaluate feasibility. If QCP letters were required to be submitted April 2, as comment recommends, it is anticipated that scores would not be final until mid-May to early June, leaving little time for staff to accurately identify potential awarded Applications and perform reviews and feasibility analysis before the July awards are required to be made by the Board.

Staff understands that Applicants would prefer more time to work with neighborhood organizations after Applications are submitted. However, given that neighborhood organizations are notified nearly three months from the March 1, 2007 deadline (for Applicants submitting a Pre-Application), and that they should be primarily working independently, there is sufficient time for Applicants to work with neighborhood organizations. Therefore, staff believes that it is critical that the current draft deadlines remain as March 1, 2007 for Applications submitting Pre-applications.

Board Response:

Accepted staff's recommendation.

§49.9(i)(2)(A)(iv) - Quantifiable Community Participation (3, 5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55), Page 39 of 69

Comment:

This year's draft QAP continues to limit the input of public housing residents by restricting quantifiable community participation letters from resident councils to those "in which the council is commenting on the Rehabilitation or Reconstruction of the Development occupied by the residents." Comment suggests that substantial Fair Housing and Equal Protection arguments have been presented to the TDHCA Board regarding the probable unconstitutionality of this limitation (3, 5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55). Significant comment also asserts that if TDHCA does not correct this unjust and obvious noncompliance with state statutes and the Fair Housing Act, TDHCA risks a request for an opinion from the Texas Attorney General as well as the filing by residents of a fair housing violation complaint with Housing and Urban Development (HUD) (5, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53).

Commenters are not aware of any benefit to the neighborhood as a whole, of prohibiting public housing residents from having an effective voice in the TDHCA's Quantifiable Community Participation process, and they question why should a resident council's input be ineligible for scoring if the input of a board of directors of an apartment dweller's association would be scored? Comment requests that the Department delete this limitation on the ability of resident councils to provide truly effective commentary on the development of their communities (3). Further comment requests that neighborhood organizations include residents councils in which the council is commenting on the Rehabilitation, Reconstruction, or New Construction of the Development within the boundaries of their council and again requests that the definition of Reconstruction in §49.3(75) be revised to include HUD mixed finance housing developments that proposes more than the number of units demolished (5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53).

Staff Response:

Staff does not recommend a change to this section as recommended. Staff acknowledges there is a current Attorney General Opinion pending which will address the issue. Staff will monitor this opinion and if change is later found necessary, it will be made in accordance with the AG Opinion. However, staff does recommend the following Administrative change to make "definition" of neighborhood organizations clearly only applicable to this section:

(iv) Certify that the organization is a "neighborhood organization." For the purposes of this section, a "neighborhood organization" is defined as an organization of persons living near one another within the organization's defined boundaries in effect December 1, 2006 that contain the proposed Development site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood. "Neighborhood organizations" include homeowners associations, property owners associations, and resident councils in which the council is commenting on the Rehabilitation or Reconstruction of the property occupied by the residents. "Neighborhood organizations" do not include broader based "community" organizations; organizations that have no members other than board members; chambers of commerce; community development corporations; churches; school related organizations; Lions, Rotary, Kiwanis, and similar organizations; Habitat for Humanity; Boys and Girls Clubs; charities; public housing authorities; or any governmental entity. Organizations whose boundaries include an entire county or larger area are not "neighborhood organizations", unless the large organization is a parent organization of smaller organizations whose purpose and composition would otherwise meet the requirements of this definition. Organizations whose boundaries include an entire city are generally not "neighborhood organizations", unless the city organization is a parent organization of smaller organizations whose purpose and composition would otherwise meet the requirements of this definition.

Board Response:

Accepted staff's recommendation.

§49.9(i)(2)(A)(v) - Quantifiable Community Participation (4), Pages 39 and 40 of 70

Comment:

New language to this section adds one option to submit a letter from the city showing a neighborhood organization was on record with the city as of December 1, 2006 in order for it to be on "record with the state (Department)." Comment suggests that Government Code §2306.6711(b)(2) states "on record with the county or state," not "city." Texas Attorney General Opinion GA-0208 reinforced this point and further asserts that this subverts legislative intent and this alternate certification should be deleted (4).

Staff Response:

Staff recommends no change. Staff believes that the current language is transparently clear that a neighborhood organization that is on record with the city may become on record with the state if the requirements of this section are met, and without submitting the required documentation to become on record with the state. It is not on record with the state simply by being on record with the city.

Board Response:

Accepted staff's recommendation.

§49.9(i)(2)(A)(viii) - Quantifiable Community Participation (5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55), Page 40 of 69

Comment:

Comment asserts that the draft of the QAP does not require the letter to state the exact boundaries of the Neighborhood Organization; all that the draft requires is that the Neighborhood Organization state the development is within their boundaries. Therefore, the comment suggests that this provision as of December 1, 2006 is a typo because the draft QAP does not require the boundaries to be identified (5, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53).

Staff Response:

Staff concurs and recommends the following change to this section:

(viii) The organization must accurately certify that the boundaries in effect December 1, 2006 include the proposed Development Site and acknowledge in the certification that annexations occurring after that time to include a Development site will not be considered eligible. A Development site must be entirely contained within the boundaries of the organization to satisfy eligibility for this item; a site that is only partially within the boundaries will not satisfy the requirement that the boundaries contain the proposed Development site.

Board Response:

Accepted staff's recommendation.

§49.9(i)(3) - Income Levels of the Tenants of the Development (1, 10, 31, 38, 3, 4, 12, 18, 17, 21, 26, 35, 5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 57), Pages 41 and 42 of 69

Comment:

Substantial comment opposes new language which disallows households receiving any Section 8 voucher rental subsidies, Tenant Based Rental Assistance (TBRA), or similar rental assistance to qualify a unit in which points were awarded for this section (1, 10, 17, 31, 38, 3, 4, 12, 18, 17, 21, 26, 35, 5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 57). Comment asserts that this could possibly be a fair housing violation and that the prohibition unfairly applies throughout the extended use period (1, 38, 57). Comment also asserts that mixed income housing developments with a large percentage of low-income tenants rarely command market rents sufficient to offset the operating deficits experienced with tenants at the 30% AMGI level, even without consideration of debt service (3). Comment also asserts that the language would actually direct that a development would be required to deny admission to a voucher holder if that unit had been designated for very low income household, which would be a violation of state and federal law (4).

Staff Response:

Staff does not agree that this language would violate fair housing because the current Section 8 policy would still be enforced under the current language. Therefore, an Applicant could not deny a qualified resident with a voucher. The Applicant would only be precluded from certifying that household at the level the points were awarded on. Thus, the lower rents on the properties would be available to households eligible at the lower AMGIs, but that do not have a voucher or subsidy attached to the household. However, staff acknowledges the significant amount of comment opposing the draft language and recommends deleting the draft language which restricted the qualification of the targeted units to non-Section 8 households (or similar) and instead proposes the following language for this section:

(3) The Income Levels of Tenants of the Development. Applications may qualify to receive up to 22 points for qualifying under only one of subparagraphs (A) - (F) of this paragraph. To qualify for these points, the household incomes must not be higher than permitted by the AMGI level The Development Owner, upon making selections for this exhibit, will set aside Units at the levels of AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA. These income levels require corresponding rent levels that do not exceed 30% of the income limitation in accordance with §42(g), Internal Revenue Code.

Board Response:

Accepted staff's recommendation.

§49.9(i)(4) - Quality of the Units (Administrative), Page 42 of 69

Administrative Change:

Staff recommends an Administrative change to this section which simply capitalizes the words "Unit" and "Bedrooms" so that it is clear that the words are used in accordance with the definitions in the QAP.

Board Response:

Accepted staff's recommendation.

§49.9(i)(4)(B) - Quality of the Units (14, 54), Page 42 of 69

Comment:

Comment commends TDHCA for recognizing that rehabilitation and preservation projects should not be expected to meet the same green building criteria as new construction developments. The comment strongly supports TDHCA's efforts to award rehabilitation developments one and a half times the number of points awarded to new construction when incorporating the same energy efficient materials. Comment further asserts that it is often not practicable to integrate all of the new energy saving technologies into an existing structure and site. Nonetheless, as the National Resources Defense Council has recognized, "Preservation of affordable housing is inherently energy and resource efficient." Preservation of existing housing conserves energy and resources that might otherwise be expended in the demolition and disposal of existing structures, and the construction of new dwellings (14).

Additional comment encourages Single Room Occupancy (SRO) and scattered site developments through the tax credit program and due to the complexities of these types of developments is opposed to the proposed reduction in points related to specific amenities (54).

Staff Response:

Staff appreciates positive feedback relating to this item. Staff does not recommend changes to this section which would delete the proposed language which reduces the additional points awarded to Rehabilitation or SROs because staff believes that the reduction from 2 to 1.5 encourages a higher quality of Rehabilitation Developments and SROs, while still providing additional point incentives to Rehabilitation Developments and SROs. Staff does recommend the following administrative change in an effort to clarify the 1.5 point value:

(B) Quality of the Units. Applications may qualify to receive up to 14 points. Applications in which Developments provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in clauses (i) - (xx) of this subparagraph, not to exceed 14 points in total. Applications involving scattered site Developments must have all of the Units located with a specific amenity to count for points. Applications involving Rehabilitation or single room occupancy may receive 1.5 points for each point item, not to exceed 14 points in total.

Board Response:

Accepted staff's recommendation.

§49.9(i)(4)(B)(vii), (ix), and (xii) - Quality of the Units (14, 31), Page 42 of 69

Comment:

Comment encourages TDHCA's efforts to award points for communal laundry facilities. Community laundry rooms can reduce water usage by more than 300% and energy consumption by 500% compared to buildings with individual washer and dryer connections in each apartment. These significant savings increase when communal laundry rooms are equipped with high-efficiency washers and dryers. However, there is concern that more points are awarded for the installation of in-unit washer/dryer connections and appliances. Comment asserts that points should not be awarded for washer and dryer hook-ups in each unit, as this feature results in unduly excessive water usage. Comment recommends that no points be awarded for in-unit washer/dryer hook-ups and appliances and points be awarded for community laundry facilities (14).

Additional comment points to the fact that, until last year, evaporative coolers in dry climates were allowed as an alternative to 14 SEER HVAC in the 2005 QAP because evaporative cooling uses far less electricity and has no chlorofluorocarbons through emissions with the Freon gas that it uses. Comment requests that the language from 2005 get put back into the 2007 QAP (31).

Staff Response:

Staff does not recommend the proposed changes relating to in-unit washers and dryers. While water conservation techniques are important, this change would be significant enough to warrant further public comment and there are benefits and conveniences for tenants having in-unit laundry capabilities. In order to truly evaluate the effects of the proposed revisions, staff recommends that further research and discussion occur for the 2008 QAP.

Staff does concur with the proposed language relating to evaporative water cooling and recommends the following language:

(xvii) 14 SEER HVAC or evaporative coolers in dry climates for New Construction or radiant barrier in the attic for Rehabilitation (3 points)

Board Response:

Accepted staff's recommendation.

§49.9(i)(5) - Commitment of Development Funding by Local Political Subdivisions (1, 5, 38, 3, 10, 15, 16, 17, 18, 24, 25, 29, 30, 32, 33, 35, 36, 5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55, 58), Pages 42-44 of 69

Comment:

Significant comment recommends reverting to last year's point system for this category or to significantly reduced percentages, and supporting data was submitted to substantiate this request (1, 38, 3, 10, 15, 16, 18, 24, 25, 29, 30, 32, 33, 35, 36, 58).

Comment was also received regarding the draft language that limits the developer to only one source of funding. Comment asserts that this is particularly unfair to smaller communities where a developer may have to cobble together a donation of land from the city, an infrastructure grant from a county and funds from a Housing Finance Agency. Even though this section has been modified to allow substitution of the source, Applicants still need to be able to get these funds from several sources (1, 38, 5, 35, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55).

Comment further requests a clarification as to why staff took the TDHCA HOME funds out of this section and further asserts that if HOME funds (which are federal) are considered local when distributed by a City, they should be considered "local" when they are distributed by TDHCA (1,58). Comment requests that the Department continue to allow TDHCA's HOME Funds to count for these points as was allowed in the 2005 and 2006 QAPs (1, 17, 18, 58).

One comment supported this language so that the TDHCA HOME funds may be awarded to Developments truly in need of the funds, rather than just to get points for tax credits (27). An additional comment request this item as a threshold item instead of selection (25).

Additional comment requests that the QAP address what would occur if the Total Development Costs increase and the percentages change. (5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53). Comment further suggests that if the QAP will use a percentage of cost system (rather than dollar per unit), then the total development costs will need to remain fixed at the Application stage for purpose of these points. Additionally, if loans are going to be acceptable, then there must be a minimum term and a maximum interest rate of a value that can be proven to benefit the project (1).

Comment also requests the QAP clearly specify whether funding for operating expenses qualifies for points under this section (5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53).

One additional comment asserted that points were awarded last year to developments getting property tax waivers for amounts that were clearly inconsistent with assessment practices, mandated in some cases for affordable housing by state statute, and in some cases involving entities that would likely structure their developments to be property tax exempt such as PHA's and other instrumentalities of the City or County. Waivers of any kind of fee or taxes must apply to Development Costs applicable during the development period. Fee or tax waiver will not count during operating period, EX: once the buildings are placed in service (44).

Staff Response:

Although significant comment opposes the point values in the draft QAP, it should be noted that the language was taken directly from public comment received in the July 2006 TDHCA Rules Open Forum. These same values were submitted in public comment in 2005 as well. The intent of the increase was to create a scoring requirement that is based on substantial and meaningful development funding by leveraging with local resources. However, the significant comment received does seem to indicate that the percentages required to substantiate the funds are too high, causing hardship throughout the state, but especially in Rural areas. While staff does agree that the total sources needed to substantiate these points should be reduced, staff does not agree that the use of percentages of total development costs has a negative impact on rural areas when the requirements are lessoned. Thus, rather than use a specific dollar amount for specific points, it is recommend that 6 points be allowed for a contribution equal to 1% of the total development cost per low-income unit, 12 points for a contribution equal to 2.5% of the total development cost per low-income unit, and 18 points for a contribution equal to 5% of the total development cost per low-income unit.

As it relates to the restriction of one source in the Application, this was an administrative error in the QAP. Last year, an Applicant was not allowed to substitute any source of funds after the Application was submitted. Therefore, if an Application needed $100,000 to substantiate points for this section, most Applicants submitted 5 or more separate sources to substantiate the $100,000, which was reflected as $500,000 in the Sources and Uses. This "padding" of sources became very problematic when determining feasibility. The intention of the limitation was not to limit the number of qualifying sources to substantiate points, but rather it was meant to address last year's problem by allowing substitutions of sources and restricting this "padding" to only the source needed to substantiate points. Clearly, this section does require a change in the language. However, staff still recommends that only the sources needed to substantiate the points should be reflected in the Application. Staff recommends language reflecting this, as well as clarifying language regarding representing sources in the Application.

Staff agrees that specific terms for loans should be included in the QAP; however, none were suggested in any of the comment. Therefore, staff recommends minimal restrictions to this section with loan requirements with a minimum 1-year term at an interest rate at Applicable Fair Market Value or lower (at the time of Application). Additionally, staff concurs that language should be added to this section that clarifies that the value of any in-kind contributions or waivers should only represent the value during the period the contribution or waiver is received and/or assessed. However, staff does not agree that the section should clarify whether or not funds for operating costs would be included in this definition, because the definition of "Total Housing Development Costs" is explicit in the QAP.

Staff does not agree that points "freeze" once awarded because points awarded pursuant to this section should only be awarded based on the costs represented in the most current Application. Therefore, any changes made to the original Total Housing Development Costs in the Cost Schedule will affect the points awarded for this section. These changes do not include the calculations made by REA outside of the Applicant's Cost Schedule.

As it relates to the TDHCA HOME funds, staff concurs with adding the ability for TDHCA HOME funds to qualify for points; however, staff recommends moving and amending last year's language within the section for clarity.

Additionally, staff recommends an administrative clarification which precludes rounding the percentages for this section. Staff also recommends restructuring the language so that the requirements are more clear and less confusing.

Lastly, staff concurs with comment made in another section of this document that this section, §49.9(i)(26), Third Party Funding Commitment Outside of Qualified Census Tracts and §49.9(i)(25), Leveraging of Private, State and Federal Resources should be as consistent as possible in requirements in all requirements.

The changes to this whole section are as follows:

(5) The Commitment of Development Funding by Local Political Subdivisions. Applications may qualify to receive up to 18 points for qualifying under this paragraph. (§2306.6710(b)(1)(E))

(A) Basic Submission Requirements for Scoring. Evidence of the following must be submitted in accordance with the Application Submission Procedures Manual (ASPM).

(i) Evidence must be submitted in the Application that the proposed Development has received or will receive qualifying loan(s), grants or in-kind contributions from a Local Political Subdivision, as defined in this title.

(ii) The loans, grant(s) or in-kind contribution(s) must be attributed to the Total Housing Development Costs, as defined in this title, unless otherwise stipulated in this section.

(iii) An Applicant may only submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form. For example, if an Applicant is requesting 18 points, five sources may be submitted if each is for an amount equal to 1% of the Total Housing Development Cost. However, five sources may not be submitted if each source is for an amount equal to 5% of the Total Housing Development Cost.

(iv) An Applicant may substitute any source in response to a Deficiency Notice or after the Application has been submitted to the Department.

(v) A loan does not qualify as an eligible source unless it has a minimum 1-year term and the interest rate must be at the Applicable Fair Market Rate (AFR) or below (at the time of application

(vi) In-kind contributions such as donation of land, tax exemptions, or waivers of fees such as building permits, water and sewer tap fees, or similar contributions are only eligible if the in-kind contribution provides a tangible economic benefit that results in a quantifiable Total Housing Development Cost reduction to benefit the Development will be acceptable to qualify for these points. The quantified value of the Total Housing Development Cost reduction may only include the value during the period the contribution or waiver is received and/or assessed Donations of land must be under the control of the Applicant, pursuant to §49.9(h)(7) of this title to qualify.

(vii) To the extent that a Notice of Funding Availability (NOFA) is released and funds are available, funds from TDHCA's HOME Investment Partnerships (HOME) Program will qualify if a resolution is submitted with the Application from the Local Political Subdivision authorizing the Applicant to act on behalf of the Local Political Subdivision in applying for HOME Funds from TDHCA for the particular application.

(viii) Development based rental subsidies may qualify under this section if evidence of the remaining value of the contract is sub-

mitted from the Local Political Subdivision. The value of the contract does not include past subsidies.

(ix) Evidence to be submitted with the Application must include a copy of the commitment of funds; a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received; or a certification of intent to apply for funding that indicates the funding entity and program to which the application will be submitted, the loan amount to be applied for and the specific proposed terms. For in-kind contributions, evidence must be submitted in the Application from Local Political Subdivision substantiating the value of the in-kind contributions.

(x) If not already provided, at the time the executed Commitment Notice is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the governing body of the Local Political Subdivision for the sufficient local funding to the Department. If the funding commitment from the Local Political Subdivision has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment Notice will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the Local Political Subdivision's funds, the Commitment Notice will be rescinded and the credits reallocated.

(xi) Funding commitments from a Local Political Subdivision will not be considered final unless the Local Political Subdivision attests to the fact that any funds committed were not first provided to the Local Political Subdivision by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Local Political Subdivision or subsidiary.

(B) Scoring. Points will be determined on a sliding scale based on the percentage of the Total Housing Development Costs of the Development, as reflected in the in the Development Cost Schedule. If a revised Development Cost Schedule is submitted to the Department in response to a deficiency notice at anytime during the review process, the Revised Development Cost Schedule will be utilized for this calculation, and Applicants will be notified of the revised score, consistent with §49.9(e) of this title. Do not round for the following calculations. The "total contribution" is the total combined value of qualifying loan(s), grants or in-kind contributions from a Local Political Subdivision pursuant to subparagraph (A) of this paragraph.

(i) A total contribution equal to or greater than 1% of the Total Housing Development Cost of the Development receives 6 points; or

(ii) A total contribution equal to or greater than 2.5% of the Total Housing Development Cost of the Development receives 12 points; or

(iii) A total equal to or greater than 5% of the Total Housing Development Cost of the Development receives 18 points.

Board Response:

The Board accepted staff's recommendation, and further amended the section to correct an administrative error in subsection (v) of this section relating to the term "AFR" as follows:

(v) A loan does not qualify as an eligible source unless it has a minimum 1-year term and the interest rate must be at the Applicable Federal Rate (AFR) or below (at the time of application)

§49.9(i)(7) - Rent Levels of the Units (54), Page 44 of 69

Comment:

Comment wants to encourage scattered site and single family design in the tax credit program and is opposed to the change in this section (54).

Staff Response:

Staff recommends no change to this section. Given that 100% of the Units on a scattered site Development must be 100% low-income, scattered site developments will only be eligible to receive the full 12 points under this section.

Board Response:

Accepted staff's recommendation.

§49.9(i)(8) - The Cost of the Development by Square Foot (1, 38, 4, 17, 31), Pages 44 and 45 of 69

Comment:

Comment asserts that the Department has identified a 14% increase in Marshall & Swift, but only passed on roughly one half of this increase in establishing the cost limits for selection criteria. The comment further asserts increase in costs needs to match Marshall & Swift increases. (1, 38, 4). Comment suggests the Department should be consistent and raise the maximum for all other developments by an additional $3 per square foot to put them on par with other developments (4). Other comment suggests the need to be increased to Elderly: $90, Elderly (Tier 1): $92, Family: $80, and Family (Tier 1): $82 (1, 38):

For the purposes of this subparagraph only, if the proposed Development is a high-rise building of 4 or more stories, the net rentable area (NRA) may include elevator served interior corridors. Increase in costs needs to match Marshall & Swift increases. Further, the definition of Net Rentable Area needs to include two and three story senior facilities which are required to have elevators. Comment suggests this section be changed to read, if the proposed Development is an elevator building serving seniors or a high rise building serving any population, the NRA may include elevator served interior corridors (1, 17, 38).

One comment commends the Department for the suggested increases (31).

Staff Response:

Staff does not concur with the increased costs. As it relates to the comment stating, "The Department has identified a 14% increase in Marshall & Swift, but only passed on roughly one half of this increase in establishing the cost limits...Increase in costs needs to match Marshall & Swift increases.", it should be noted that the current language does provide roughly a 7% increase from 2006 to 2007, which is consistent with Marshal & Swift for 1 year (the 14% increase was over 2-years). Therefore, staff continues to consider the current limitations at an appropriate level for selection. It should also be noted that these limitations are not threshold maximums, but are point incentives to have lower-than-average costs per square foot.

Staff does concur with the requested language relating to high-rise buildings and recommends the following language:

(8) The Cost of the Development by Square Foot (Development Characteristics). Applications may qualify to receive 10 points for this item. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) For this exhibit, costs shall be defined as construction costs, including site work, direct hard costs, contingency, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be costs per square foot of net rentable area (NRA). For the purposes of this subparagraph only, if the proposed Development is an elevator building serving elderly or a high rise building serving any population, the NRA may include elevator served interior corridors.

Board Response:

Accepted staff's recommendation.

§49.9(i)(9) - The Services to be Provided to Tenants of the Development (12), Page 45 of 69

Comment:

Comment supports adding language requiring an executed supportive service agreement at Application, as well as increasing the point value for this item from 4 points to 8 points, and also suggests the requirement similar to the Bond requirement that an executed contract be required at Application (12).

Staff Response:

Staff recommends no change to this section. Given that 98% of Applications in 2006 received these points, increasing the points would only award a blanket increase to nearly all Developments. Additionally, staff does not recommend that the executed contract be required because this restricts the flexibility of owners to get out of contracts with poor service providers and/or switch the types of services provided based on resident populations throughout the compliance period.

Board Response:

Accepted staff's recommendation.

§49.9(i)(10) - Rehabilitation or Reconstruction (1, 38, 10, 37, 5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53), Page 45 of 69

Comment:

Comment suggests that if a proposed development is a rehabilitation of an existing residential development, but part of the apartments' buildings have been fire damaged or basically need to be torn down to the ground and rebuilt, while the other portions could be renovated to a certain extent, that this would prevent an Application from receiving points under this section. The commenter asserts that the way the QAP reads, this scenario would be both rehabilitation and reconstruction, and because this section awards points if a development is "solely" rehabilitation or reconstruction, this development would not qualify for the points (37).

Further comment suggests the following change to the current language for similar reason in order to provide clarity: "Applications proposing Rehabilitation (excluding New Construction of non-residential buildings), and/or Reconstruction (excluding New Construction of non-residential buildings) qualify for points." (1, 38, 5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53)

Additional comment asserts that this section provides to much of a point preference to rehabilitation and reconstruction Applications (10).

Staff Response:

Staff recommends no change because the recommended definitions of "Rehabilitation" and "Reconstruction" are mutually exclusive. Therefore, an Application cannot be a partial Reconstruction and Rehabilitation development, for the purposes of points under this section. In the example given in comment, the Application could qualify for points because it would qualify as 100% reconstruction, under the recommended definition of reconstruction.

Board Response:

Accepted staff's recommendation.

§49.9(i)(11) - Housing Needs Characteristics (1, 38, 4, 41), Page 45 of 69

Comment:

Comment suggests that these scores have not been accurate with respect to local need. There are many people who live in adjoining counties and smaller communities that have significant housing needs and work in the larger Metropolitan Statistical Areas. The scoring assumes that people with affordable housing needs live and work in the same community. There are smaller communities that have severe affordable housing needs that are experiencing economic growth and still receive disproportionately low Affordable Housing Needs Score (AHNS) scores (41). Comment suggests that this Section contains a minor language change which could result in uncertainty over the score for Applicants. The old language stated that "Each application will receive a score," which is changed to "Each application may receive a score." The previous language should be restored (1, 38, 4).

Staff Response:

Staff does not recommend that this section be deleted because it is provides point incentives for Developments in un-saturated areas. Staff does not recommend that the word, "may" be deleted, but does recommend the following language for clarification:

(11) Housing Needs Characteristics. (§42(m)(1)(C)(ii)) Applications may qualify to receive up to 7 points. Each Application may receive a score if correctly requested in the self score form based on objective measures of housing need in the Area where the Development is located. This Affordable Housing Need Score for each Area will be published in a Site Demographic Characteristics table in the Reference Manual.

Board Response:

Accepted staff's recommendation.

§49.9(i)(12) - Development includes the Use of Existing Housing as Part of a Community Revitalization Plan (5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53), Page 45 of 69

Comment:

The definition of Reconstruction in §49.3(75) must be revised to include HUD mixed finance developments which allows applicants to fully utilize their site in accordance with the density allowed by the local building code (5, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53).

Staff Response:

For the aforementioned reasons relating to the definition of Reconstruction, staff does not recommend a change to this section.

Board Response:

Accepted staff's recommendation.

§49.9(i)(13)(E) - Pre-Application Participation Incentive Points (Administrative), Page 44 of 69

Administrative Change:

Staff recommends the following administrative change to this section, which excludes points awarded under §49.9(1)(16), Demonstration of Community Support other than Quantifiable Community Participation, from consideration under this section:

(E) Be awarded by the Department an Application score that is not more than 5% greater or less than the number of points awarded by the Department at Pre-Application, with the exclusion of points for support and opposition under paragraphs (2), (6), and (16) of this of this subsection. An Applicant must choose, at the time of Application either clause (i) or (ii) of this subparagraph:

Board Response:

Accepted staff's recommendation.

§49.9(i)(14)(C) - Development Location (1, 38, 57), Page 46 of 69

Comment:

Comment suggests Item (C) was stricken because of possible duplication with the points for developments in QCTs with revitalization plans. However, it also deletes Tax Increment Financing districts (TIFs) and Downtown Revitalization Districts important for Urban developments. Comment suggests this language should be reinstated to allow cities to be involved in directing the placement of affordable housing where it is most needed (1,38). The provision promotes new development where needed, particularly for seniors. Section 42(m)(B)(ii)(III) of the IRC requires for a plan to give preference to projects in a QCT where the development contributes to a concerted community revitalization plan (57).

Staff Response:

Staff does not recommend a change to this item that was basically duplicative of the current (i)(12) of this section. For example, typically TIFs and Downtown revitalization districts would qualify under (i)(12), and this section as it was drafted would only duplicate those points awarded. Paragraph (22) of this subsection, Qualified Census Tracts with Revitalization, meets the requirements of §42(m)(B)(ii)(III).

Board Response:

Accepted staff's recommendation.

§49.9(i)(15) - Exurban Developments (3, 5, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53), Page 47 of 69

Comment:

Comment provides support to reinstate the language providing that a Development financed in part with HOPE VI or HUD Capital Grant financing will qualify for these 7 points if the Application is a joint venture partnership between the public housing authority or its related entity and private market interests (either for profit or nonprofit) (3, 5, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53). Comment further asserts that in the current federal funding climate, public housing authorities are dependent upon tax credits in order to leverage their HOPE VI and Capital Grant funding to provide any new housing stock for their clients. Because a public housing authority's development is not able to qualify for many Selection Criteria, repeated requests have been made to the TDHCA for a public housing set-aside, as is provided in many states. Several years ago these 7 points were specifically extended to HOPE VI and Capital Grant projects in lieu of such a set-aside. In fact, these points were added by the Governor's Office after the QAP had been accepted by the TDHCA Board. This year, the public housing authority of the City of Beaumont is one of four recipients nation-wide of a HOPE VI grant, and the ability to compete effectively for tax credit allocations is critical to Beaumont's ability to provide the leveraging necessary to qualify to spend the awarded HOPE VI funds. While we acknowledge, and appreciate, the new §49.9(i)(10) which will provide points for Rehabilitation or Reconstruction developments, the 7 points awarded under §49.9(i)(15) are essential to the ability of public housing authorities to continue to provide safe and sanitary housing to low-income families (3).

Additional comment asserts that there is no rationale for not encouraging reconstruction and rehabilitation. Many of our markets are overbuilt with little or no rental rate growth. Communities remain more supportive of rehabilitations and reconstruction of dilapidated properties than new construction affordable housing. Staff should not do anything to discourage this practice, particularly the public housing sector provisions. Staff has to leverage HOPE VI funds and other Capital Funds programs in order to compete nationally for these resources. The entire state is put at a disadvantage in apply for these very scarce sources of housing funds without the ability to leverage them with Housing Tax Credits (44).

Staff Response:

Staff recommends no changes to this section; with the exception of an administrative change which clarifies that population is based on the "most current" decennial census.

(15) Exurban Developments (Development characteristics). (§2306.6725(a)(4); §42(m)(1)(C)(i)) Applications may qualify to receive 7 points if the Development is not located in a Rural Area and has a population less than 100,000 based on the most current Decennial Census

Board Response:

Accepted staff's recommendation.

§49.9(i)(16) - Demonstration of Community Support other than Quantifiable Community Participation (5, 31, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55), Page 47 of 69

Comment:

Comment asserts that this new provision prevents the applicant from being able to earn these points if a neighborhood organization submits a letter of support but is determined by TDHCA to not count for some reason. Applicants should be able to submit both QCP letters and these types of letters but only the QCP letters will count if they can be scored. If the QCP letters do not count, then an applicant should be able to earn these points (5, 31, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55). Comment also asked for a definition of community or civic organizations (31).

Staff Response:

Staff does not recommend a change to this section pursuant to the comment. The purpose of this section is to award points to Developments in areas with no qualified neighborhood organizations, and is not intended to award points to areas with qualified neighborhood organizations whose letters are not eligible. If an eligible neighborhood organization submits an ineligible letter, the Application will not be awarded points under this section.

It should be noted that if a letter is found ineligible because the organization itself is ineligible or not qualified, the points in this section may be awarded. Staff does not believe that there is a need for a definition of community or civic organizations. Staff does recommend an Administrative change to this section which will clarify the definition of neighborhood organization:

(16) Demonstration of Community Support other than Quantifiable Community Participation: If an Applicant requests these points on the self scoring form and correctly certifies to the Department that there are no neighborhood organizations that meet the Department's definition of Neighborhood Organization pursuant to §49.9(i)(2)(A)(iv) of this title and 12 points were awarded under paragraph (2) of this subsection, then that Applicant may receive two points for each letter of support submitted from a community or civic organization that serves the community in which the site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. The community or civic organization must provide some documentation of its existence in the community to include, but not be limited to, listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that are not active in the area that includes the location of the Development will not be counted. For purposes of this item, community and civic organizations do not include neighborhood organizations, governmental entities, taxing entities or educational activities. Letters of support received after March 1, 2007, will not be accepted for this item. Two points will be awarded for each letter of support submitted in the Application, not to exceed 7 points. Should an Applicant elect this option and the Application receives letters in opposition by March 1, 2007, then two points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization serving the community. At no time will the Application, however, receive a score lower than zero for this item.

Board Response:

Accepted staff's recommendation.

§49.9(i)(17) - Developments in Census Tracts with No Other Existing Housing Supported by Tax Credits (24), Page 47 of 69

Comment:

Comment suggests that this new language will make many rural applications non-competitive, after the Rural allocation is filled and rural applications will not be able to compete with non-rural deals. Many rural towns have only one census tract and many others only two. If the census tract containing the bulk of the population has ever had a tax credit deal, the potential application would need to be moved to another census tract, if available, even if the tract only includes ranches, farms, cows and horses. A suggested solution for this issue would be a 3, 5 or 10 year limitation for previous developments. (24)

Staff Response:

To prevent a possible disparity, staff recommends that Rural Applications, which compete only with other Rural Applications and therefore will retain equality among competing Applications, not be eligible for these points. Staff recommends the following language:

(17) Developments in Census Tracts with No Other Existing Developments Supported by Tax Credits: The Application may receive 7 points if the proposed Development is located in an Urban/Exurban Area and in a census tract in which there are no other existing developments supported by housing tax credits. Applicant must provide evidence of the census tract in which the Development is located. (§2306.6725(b)(2)) These Census Tracts are outlined in the 2007 Housing Tax Credit Site Demographic Characteristics Report.

Board Response:

The Board denied staff's recommendation to limit points to Urban/Exurban Applications based on public comment received in the Board meeting. The amended language is as follows:

(17) Developments in Census Tracts with No Other Existing Developments Supported by Tax Credits: The Application may receive 7 points if the proposed Development is located in a census tract in which there are no other existing developments supported by housing tax credits. Applicant must provide evidence of the census tract in which the Development is located. (§2306.6725(b)(2)) These Census Tracts are outlined in the 2007 Housing Tax Credit Site Demographic Characteristics Report.

§49.9(i)(18) - Tenant Populations with Special Housing Needs (1, 12, 38, 4, 24), Page 47 of 69

Comment:

Substantial comment requests that any applicants receiving points for serving special needs populations should be required to "hold these units open" for a period of 12 months, rather than 24 months (1, 38, 4, 24). The shorter period is supported by the advocates as they want to encourage (rather than discourage) the setting aside of units for persons with disabilities and more developers can accommodate a shorter period as a long "hold" open period is discouraged by investors (1).

Conversely, one comment did request that developments be required to set aside these units for longer than 12 months; however, their comment seemed to reflect concern that tenants would be evicted after 24 months and not a comment on the length of time a Unit may be vacant for eligible tents (12).

Staff Response:

Staff concurs with the comment to hold the units open for a period of 12 months, rather than 24 months and recommends the following language:

(18) Tenant Populations with Special Housing Needs. Applications may qualify to receive 4 points for this item. (§42(m)(1)(C)(v)) The Department will award these points to Applications in which at least 10% of the Units are set aside for Persons with Special Needs. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development owner agrees to affirmatively market Units to Persons with Special needs. In addition, the Department will require a minimum 12 month period during which units must either be occupied by persons with Special Needs or held vacant. The 12 month period will begin on the date each building receives its certificate of occupancy. For buildings that do not receive a Certificate of Occupancy, the 12 month period will begin on the placed in service date as provided in the Cost Certification manual. After the 12 month period, the owner will no longer be required to hold units vacant for households with special needs, but will be required to continue to affirmatively market units to household with special needs.

Board Response:

Accepted staff's recommendation.

§49.9(i)(20)(B) - Site Characteristics (1, 38), Page 48 of 69

Comment:

Comment requests that this language be updated to be more "user friendly" to downtown/urban developments and more predictable for rural areas. For instance, some cities have "active railroad tracks" but have noise reduction features. Also, there are varying degrees of high voltage transmission power lines and definitions are hard to locate (1,38).

Staff Response:

Staff concurs and recommends the following language:

(ii) Developments located adjacent to or within 300 feet of active railroad tracks will have 1 point deducted from their score, unless the applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail. Rural Developments funded through TX-USDA-RHS are exempt from this point deduction...

(v) Developments where the buildings are located within the "fall line" of high voltage transmission power lines will have 1 point deducted from their score.

Board Response:

Accepted staff's recommendation.

§49.9(i)(21) - Development Size (1, 38), Page 48 of 69

Comment:

Comment asserts that Phase 2 developments, particularly in rural areas, should be encouraged, as these tend to improve operating feasibility through the ability to achieve greater economies of scale (1, 38).

Staff Response:

Staff concurs and recommends the following language:

(21) Development Size. The Development consists of not more than 36 (3 points).

Board Response:

Accepted staff's recommendation.

§49.9(i)(23) - Sponsor Characteristics (60), Page 49 of 69

Comment:

Comment received requests that since Texas is a Community Property state, the spouses of Developers who have received two 8609's for more than two Developments should not be allowed to receive the points under the section (60).

Staff Response:

Staff recommends no change to this section. The scenario outlined in the comment would not be eligible for points because a spouse is a Related Party, as defined in the QAP, and would therefore not be eligible for points.

Board Response:

Accepted staff's recommendation.

§49.9(i)(24) - Developments Intended for Eventual Tenant Ownership (54, Administrative), Pages 49 and 50 of 69

Comment:

Comment received requests that the value for the points under this section be increased from 1 point to 5 points (54).

Staff Response:

Staff does not recommend a point increase for this section because given that 98% of applications in 2006 received these points, increasing the points would only award a blanket increase to nearly all Developments. Staff has determined that the language currently drafted in this section which allows "eligible forprofits" as an entity eligible under the Right of First Refusal is not allowed pursuant to §42(m)(1)(C)(viii) of the Code. Therefore, staff recommends an administrative clarification deleting all portions of this section stating, "or an eligible forprofit organization."

Board Response:

Accepted staff's recommendation.

§49.9(i)(25) - Leveraging of Private, State and Federal Resources (5, 423, 2, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, Administrative), Pages 50 and 51 of 69

Comment:

Comment requests that this section be revised to include that HAP contracts, HOPE VI and Capital Funds specifically as eligible for points and to provide an exception for funds being provided by a Housing Authority that may also be the applicant (5, 23, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53). Comment further suggests that the Rita areas are poised to get HOPE VI funds from HUD and that they must be in a position to leverage these funds. HOPE VI funding is very limited and very few Housing Authorities have HOPE VI Programs. The Capital Fund is the main source of capital financing for Housing Authorities to supplement their affordable housing with mixed finance application eligible units (44).

One additional comment requests clarification of whether or not federal funds awarded from a Local Political Subdivision qualify for points for this section (23).

Staff Response:

Staff does recommend a change to this section as it relates to the inclusion of Capital Grant funds and development based vouchers (HOPE VI funds are already included in the language). Staff also recommends the change to allow a Housing Authority to award funds to itself for points for this section because it is consistent with subsection (i)(5) of this section. Staff does recommend the following language which clarifies that any federal funds awarded, regardless of the issuer of funds, would qualify for a point under this section, and also provides an administrative clarification which stipulates that an applicant may not use normal rounding when applying the 3% requirement for the funding source value and that a qualifying source may be substituted at Commitment:

(25) Leveraging of Private, State, and Federal Resources. Applications may qualify to receive 1 point for this item. (§2306.6725(a)(3)) Evidence must be submitted in the Application that the proposed Development has received or will receive loan(s), grant(s) or in-kind contributions from a private, state or federal resource, which include Capital Grant Funds and HOPE VI funds, that is equal to or greater than 2% (not using normal rounding) of the Total Housing Development Costs reflected in the Application. For in-kind contributions, evidence must be submitted in the Application from a private, state or federal resource, which substantiates the value of the in-kind contributions. Development based rental subsidies from private, state or federal resource may qualify under this section if evidence of the remaining value of the contract is submitted from the source.

The value of the contract does not include past subsidies. Qualifying funds awarded through local entities may qualify for points if the original source of the funds is from a private, state or federal source. Applicants may only submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form. For example, two sources may be submitted if each is for an amount equal to 1% of the Total Housing Development Cost. However, two sources may not be submitted if each source is for an amount equal to 2% of the Total Housing Development Cost. The funding must be in addition to the primary funding (construction and permanent loans) that is proposed to be utilized and cannot be issued from the same primary funding source or an affiliated source. The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Local Political Subdivision. The Development must have already applied for funding from the funding entity. Evidence to be submitted with the Application must include a copy of the commitment of funds or a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. At the time the executed Commitment Notice is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the governing body of the entity for the sufficient financing to the Department. If the funding commitment from the private, state or federal source, or qualifying substitute source, has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment Notice will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the commitment from the private, state or federal source, the Commitment Notice will be rescinded and the credits reallocated. Funds from the Department's HOME and Housing Trust Fund sources will only qualify under this category if there is a Notice of Funding Availability (NOFA) out for available funds and the Applicant is eligible under that NOFA. To qualify for this point, the Rent Schedule must show that at least 3% (not using normal rounding) of all low-income Units are designated to serve individuals or families with incomes at or below 30% of AMGI.

Board Response:

Accepted staff's recommendation.

§49.9(i)(26) - Third Party Funding Commitment Outside of Qualified Census Tracts (Administrative), Page 51 of 69

Administrative Change:

Staff proposed the following administrative clarification, which stipulates that an Applicant may not use normal rounding when applying the 2% requirement for the funding source value.

(26) Third-Party Funding Commitment Outside of Qualified Census Tracts. Applications may qualify to receive 1 point for this item. (§2306.6710(e)(1)) Evidence that the proposed Development has documented and committed third-party funding sources and the Development is located outside of a Qualified Census Tract. The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application. The commitment of funds (an application alone will not suffice) must already have been received from the third-party funding source and must be equal to or greater than 2% (not using normal rounding) of the Total Development costs reflected in the Application. Funds from the Department's HOME and Housing Trust Fund sources will not qualify under this category. The third-party funding source cannot be a loan from a commercial lender.

Board Response:

Accepted staff's recommendation.

§49.9(i)(27) - Penalty Points (57), Page 51 of 69

Comment:

Comment suggests that penalty points with regard to a foreclosure or removal of a General Partner/Developer be limited to those occurring within 6 years of an allocation of credits for a development, not forever. With developments getting squeezed with no rent increases, and in fact rent decreases due to increasing utility allowances, and increasing operating expenses, good, qualified developers are now facing the additional risk of having a default with an older property. Changes in market or area conditions beyond a developer's control may also affect older properties. One takes these risks with newer properties for which one needs to have responsibility through the typical guarantee periods which typically end around 5 years from commencement of construction (two years to build and lease up and then a 3 year guaranty period). Even lenders and syndicators don't require guarantees after this period of time. Without change, the industry may lose many of the better and more experienced developers since they are penalized for up to five years thereafter. The proposed six year limitation is supported by major sydicators such as SunAmerica, Boston Capital and others. In instances where there has been a lack of good faith by a developer, most lenders and investors would more than likely not do further business with such an applicant, thus the department has a secondary safeguard for those situations.

Staff Response:

Staff does not recommend a change to this section because the current language only restricts for the past 5 years.

Board Response:

Accepted staff's recommendation.

§49.9(j) - Tie Breaker Factors (1, 38, 4, 14, 5, 23, 42, 43, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 60) Pages 51 and 52 of 69

Comment:

Comment requests that the current tie-breaker under paragraph (1)(D) of this subsection be moved to paragraph (1)(B) of this subsection in order to promote single-family design and eventual homeownership (54). Comment was also received requesting that an additional tie-breaker be added that would give preference to developers who reside in Texas, called a "Texas First Provision" (60).

Comment asserts that Rehabilitation of existing units involving demolition and New Construction, rather than construction within existing walls, has been segregated out and defined as "Reconstruction." "Reconstruction" is further excluded from the rehabilitation tie-breaker factor in QAP Section 49.9(j). Reconstruction carries the same benefits as other types of rehabilitation and should be restored as part of the rehabilitation tie-breaker (4). Comment further suggests the proposed tie-breaker policy clarify that Applications involving any Rehabilitation and/or Reconstruction of existing Units will win this first tier tie breaker over Applications involving solely New Construction (1, 38, 5, 23, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 55).

Staff Response:

Staff does not concur with moving the current tie-breaker under paragraph (1)(D) of this subsection to the second tie-breaker under paragraph (1)(B) of this subsection because staff believes that the current language for the second-tier tie breaker encourages development in un-saturated areas with housing tax credits, and the third tie-breaker encourages strong utilization of housing tax credits. Additionally, staff does not concur with comment which would add a Texas First Provision because the Department encourages all eligible Applicants to apply for Competitive Tax Credits, regardless of their residency. Staff concurs that the tie-breaker should include Reconstruction and recommends the following language:

(A) Applications involving any Rehabilitation or Reconstruction of existing Units will win this first tier tie breaker over Applications involving solely New Construction.

Board Response:

Accepted staff's recommendation.

§49.10(a)(2) - Board Decisions (34), Pages 52 and 53 of 69

Comment:

Comment requests that the QAP rules include more consideration being given to public opposition and the opposition of elected officials during the pre-application scoring process and beyond in the Board's decisions.

Staff Response:

Staff does not recommend a change to this section. It should be noted that staff may not recommend and the Board may not approve an Application for tax credits unless the Development is necessary to provide needed decent, safe, and sanitary housing at rental prices that individuals or families of low and very low-income or families of moderate income can afford.

Board Response:

Accepted staff's recommendation.

§49.13(a)(1)(B) - Commitment and Determination Notices (1, 38, 17), Pages 57 and 58 of 69

Comment:

Comment suggests that this language allows a recipient of a tax credit award to extend until December 31 of the year and without requiring Board Approval. Comment asserts that a deadline is needed such that funds can be awarded to the waiting list and require Board approval. Comment recommends that no extension be granted past November 1, and that Board Action be required for any extension approval (1, 38, 17).

Staff Response:

Staff believes that the Executive Director's authority to approve or deny an extension is consistent with the proposed authority the Executive Director would have over any extension request, pursuant to the draft language in §49.20(i). Staff does not recommend the request that no extension would be granted past November 1 because it would prevent extensions for applications awarded off of the waiting list close to or after November 1.

Board Response:

Accepted staff's recommendation.

§49.13(a)(6) - Commitment and Determination Notices (1, 38, 4), Page 58 of 69

Comment:

Comment suggests that this language eliminates the 10 day time period for acceptance of the commitment notice and allows the department staff to specify the due date. This has the potential to create inequities among Development Owners with staff setting different dates for each and can also create problems for Applicants trying to assemble the multitude of documents required to be submitted with the commitment notice (1, 38, 4).

Staff Response:

Staff concurs and recommends the following language:

(6) The executed Commitment or Determination Notice must be returned to the Department on the date specified with the Commitment Notice or Determination Notice, which shall be no earlier than ten days of the effective date of the Notice.

Board Response:

Accepted staff's recommendation.

§49.15(a) - Land Use Restriction Agreement (1, 38, 4, 26), Pages 60 of 69

Comment:

The recent rise in utility costs, which appear to be permanent, coupled with minimum rent provisions included in current LURAs are requiring developers to lower rents below underwritten levels due to increases in utility allowances. This is a recipe for bankruptcy as expenses rise and rents decrease. If this issue is not addressed in the 2007 QAP, and utility rates continue to rise, developers will continue to lose cash flow and may not be able to convert to permanent loans, and existing developments will become financially infeasible. Comment recommends amending this paragraph to add the following line: "The LURA prepared by the department shall not contain any provision which requires underwritten or application rents to be lowered, either for changes in AMI, utility rates, or any other reason, except in accordance with IRC Section 42." This change is required to maintain the long-term financial feasibility of new developments, a priority established by the legislature in Senate Bill 264 (2003) (1, 38, 4). Clarification to the comment indicated that the commenters wanted to insure that the LURA's are prepared not based on the rent level used by Real Estate Analysis (REA) in underwriting the project, but on the maximum allowable rents allowed by Section 42 for the income level selected (4, 26).

Staff Response:

This comment requests this language change for several reasons. As it relates to the fact that increased utility allowances cause a risk of Developments becoming infeasible because of reduced income, staff does not recommend any change the QAP

which would release an Applicant from serving households as represented in the Application to this section.

As it relates to the request that ensures that LURAs are prepared based on the rent levels selected by the applicant, and not the rent levels used by Real Estate Analysis, staff does recommend clarification to this section by adding the following language to the end of the current language:

(a) Land Use Restriction Agreement (LURA)....The LURA shall not contain any provision which requires the Development Owner to restrict rents and incomes at any AMGI level, other than the AMGI levels reflected in the final Application (at the time of Board approval) or amendments to the Application made pursuant to §49.17(d) of this title, regardless of the underwriting methodology utilized in determining feasibility. The restricted gross rents for any AMGI level outlined in the LURA will be calculated in accordance with §42(g)(2)(A), Internal Revenue Code.

To clarify the effect of this language, which is consistent with the methodology outlined in the QAP, it would ensure that any elections made by the Applicant in an Application to restrict incomes and/or rents at any Area Median Gross Incomes (AMGIs) will be calculated utilizing the methodology pursuant §42(g)(2)(A) of the Internal Revenue Code, which basically requires that the rents for the corresponding incomes at an AMGI equal 30% of the income limit. As an example, if an Application is determined to be feasible by REA and Applicant elected to build 100 low income units with 75 units serving households at 50% AMGI, then 25 units will be restricted at 60% AMGI. In this example, the LURA will reflect this election, regardless of the methodology REA used to determine the feasibility of the development.

However, using the same example, if REA determined that the development would be infeasible at the proposed rent selections elected by the Applicant, then the Application will not be recommended to the Board unless the unit mixes are changed by the Applicant in order to make the Application feasible. In this case, the Applicant may elect to change the unit mixes by submitting revised documentation to the original Application. This change could potentially affect the points awarded to the Application based on the revised rents. If the Application is determined feasible based on the new rents, and is still competitive for an award of tax credits, the LURA will reflect the rent restrictions elected in the final Application documents.

Continuing with this same example, if REA determined that the development would be infeasible at the proposed rent selections elected by the Applicant, and the Applicant chooses not to change the rents, the Applicant may chose to instead appeal the determinations made by REA. In this case, any award made would be based on the determinations made by the Board in the appeal, and the Applicant would be held to the final restrictions elected by the Applicant, as determined by the Board, and the LURA would reflect those rent restrictions.

Board Response:

Accepted staff's recommendation.

§49.15(b)(4) - Cost Certification (1, 38), Pages 60 of 69

Comment:

Comment opposes the requirement that the Department look for noncompliance at the cost certification stage. This is opposed by developers and the investors in the program, because if TDHCA does not award the credits, then the development will be foreclosed upon by the lender/investor and the affordable units and the credits will be lost. This makes investors very nervous and will affect credit prices negatively. The time to penalize an Applicant is up front before awarding credits, not after the units are being filled with qualified residents (1, 38).

Staff Response:

Staff does not recommend a change to this section. In an effort to initiate activities to reduce the level of risk of the Department's assets, this mechanism is meant to further monitor the performance for previously funded developments and ensure a minimal risk and high return on awarded Applications. An Applicant will continue to be provided an opportunity to appeal any credits rescinded as a result of this review.

Board Response:

Accepted staff's recommendation.

§49.16(g) - TX-USDA-RHS Inspections (1, 38, 26, 28), Pages 62 of 69

Comment:

Comment opposes the deletion of the coordination of inspections between USDA and TDHCA because in the past they've worked well to avoid duplication. The commentor asserts that it appears that TDHCA is returning to the days of doing things their own way and operating to increase duplication of effort (26). Comment requests to reinstate and amend the deleted sentence (1, 38):

"...For properties receiving financing through TX-USA-RHS or FHA, the Department may accept the inspections performed by TX-USDA-RHS or FHA in lieu of having other Third party inspections."

Other comment received indicates that some representatives from USDA may prefer that TDHCA perform the inspections and requests that the language stay in as is until the two agencies are provided the opportunity to further discuss the issue (28).

Staff Response:

Staff concurs with the comment received from a representative of the Rural Rental Housing Association which requested that draft language stay in until the two agencies are provided the opportunity to further discuss the issue and come to an mutual agreement in terms of how inspections will be performed. This issue will be re-evaluated this year in preparation for the 2008 QAP.

Board Response:

Accepted staff's recommendation.

§49.17(b) - Appeals (41), Page 62 and 63 of 69

Comment:

Comments suggests that the Applicant and the Department should have a reciprocal number of days to appeal and to respond to the appeal. If the Applicant is dissatisfied with the appeal to the Department, delete the requirement of appealing directly to the Board and set up a procedure whereby the Applicant has an option to either go to the Board or to appeal the decision in accordance with Alternative Dispute Resolution Policy in §49.17(i). The ADR procedure will require both the Applicant and the Department to defend their position with supporting documentation to an independent third party and to receive an unbiased decision. In the Board meeting, the Applicant has a 3 minute time slot to present their appeal.

The Board has board meeting books that are in excess of 500 pages to include appeal documentation. It is unreasonable to expect the Board to review and understand the details each of appeal prior to the Board meeting. Providing the option of third party ADR in advance of the Board meeting will provide the Board members with an independent prospective to take into consideration when they make their appeal ruling (41).

Staff Response:

Staff does not recommend a change to this section. The language relating to appeals outlined in the QAP is written pursuant to the requirements of §2306.6717(a)(5). The language actually does not prevent the ADR process from occurring prior to the Board appeal, as long as the appeal is filed to the Board 7 days prior to the Board date in which the allocation will be made. However, the statute does preclude the information that an independent third party mediator may provide as a result of ADR because it states, "Board review of an appeal under paragraph (4) of this subsection is based on the original Application and additional documentation filed with the original Application. The Board may not review any information not contained in or filed with the original Application."

Board Response:

Accepted staff's recommendation.

§49.17(c) - Challenges Regarding Applications (18), Page 63 of 69

Comment:

Comments suggests that the Department wasted incredible amounts of time in previous years processing anonymous challenges, and the anonymous challenges were a simple way to harass Applicant at the Department's expense. Comment requests the stipulation that no challenge will be accepted without the challenge including contact information (18).

Staff Response:

Staff concurs with the comment and recommends the following language:

(c) Provision of Information or Challenges Regarding Applications from Unrelated Entities to the Application. The Department will address information or challenges received from unrelated entities to a specific 2007 active Application, utilizing a preponderance of the evidence standard, in the following manner, provided the information or challenge includes a contact name, telephone number, fax number and e-mail address of the person providing the information or challenge:

Board Response:

Accepted staff's recommendation.

§49.20(a) - Timely Payment of Fees (Administrative), Page 66 of 69

Administrative Change:

In an effort to allow the ability of the Executive Director to waive fees in extenuating and extraordinary circumstances, staff recommends the following language:

(a) Timely Payment of Fees. All fees must be paid as stated in this section, unless the Executive Director has granted a waiver for specific extenuating and extraordinary circumstances. To be eligible for a waiver, the Applicant must submit a request for a waiver no later than 10 business days prior to the deadlines as stated in this section. Any fees, as further described in this section, that are not timely paid will cause an Applicant to be ineligible to apply for tax credits and additional tax credits and ineligible to submit extension requests, ownership changes and Application amendments. Payments made by check, for which insufficient funds are available, may cause the Application, commitment or allocation to be terminated.

§49.20(f) - Commitment or Determination Fee (1, 38), Page 67 of 69

Comment:

In an effort to provide an incentive to Developers to give back credits in time for reallocation to a project on the waiting list, comments suggests the added sentence to this section, "If a Development Owner has paid a Commitment Fee and returns the credits in a suitable time frame that they can be allocated to a development(s) on the Waiting List, the Development Owner will receive a refund of 50% of the Commitment Fee (1, 38)."

Staff Response:

Staff concurs with the concept of the comment, but only as it applies to credits returned the same year of allocation. Therefore, staff recommends the following language:

(f) Commitment or Determination Notice Fee. Each Development Owner that receives a Commitment Notice or Determination Notice shall submit to the Department, not later than the expiration date on the commitment or Determination notice, a non-refundable commitment fee equal to 5% of the annual Housing Credit Allocation amount. The commitment fee shall be paid by check. If a Development Owner of an Application awarded Competitive Housing Tax Credits has paid a Commitment Fee and returns the credits by November 1, 2007, the Development Owner will receive a refund of 50% of the Commitment Fee.

Board Response:

Accepted staff's recommendation.

§49.20(l) - Extension and Amendment Requests (Administrative), Page 68 of 69

Administrative Change:

In an effort to allow the ability of the Executive Director to approve certain extensions, staff recommends the following language:

(l) Extension and Amendment Requests. All extension requests relating to the Commitment Notice, Carryover, Documentation for 10% Test, Substantial Construction Commencement, Placed in Service or Cost Certification requirements and amendment requests shall be submitted to the Department in writing and be accompanied by a mandatory non-refundable extension fee in the form of a check in the amount of $2,500. Such requests must be submitted to the Department no later than the date for which an extension is being requested. All requests for extensions totaling less than 6 months may be approved by the Executive Director and are not required to have Board approval. For extensions that require Board approval, the extension request must be received by the Department at least 15 business days prior to the Board meeting where the extension will be considered. The extension request shall specify a requested extension date and the reason why such an extension is required. Carryover extension requests shall not request an extended deadline later than December 1st of the year the Commitment Notice was issued. The Department, in its sole discretion, may consider and grant such extension requests for all items. If an extension is required

at Cost Certification, the fee of $2,500 must be received by the Department to qualify for issuance of Forms 8609. Amendment requests must be submitted consistent with §49.17(d) of this title. The Board may waive related fees for good cause.

Board Response:

Accepted staff's recommendation.

Comment Source Reference

III. LEGAL AUTHORITY

The new rules concerning the 2007 Texas Housing Credit Program and Qualified Allocation Plan and Rules are adopted pursuant to the authority vested in the Texas Department of Housing and Community Affairs under Texas Government Code §§2306.001 et seq. and as required for the state's credits under 26 USC §42(m)(1).

The rules adopted are also consistent with 26 United States Code §42 and related rulings issued by the Internal revenue Service and relevant Treasury Regulations and requirements under Texas Government Code §2306.

Currently, there is a pending request for a legal opinion to the Texas Attorney General (Request No. 0515-GA) regarding issues impacting community participation that could have an impact on this rule as currently written. While not expected to have an impact, if any change is required from the resulting opinion of the Attorney General, an amendment would be place out for public comment, if necessary, in accordance with the opinion.

The adoption of the rule is subject to a statutory requirement that the Governor "approve, reject, or modify and approve the qualified allocation plan not later than December 1" as provided in Texas Government Code §2306.6724(c). Upon final approval by the Governor the final rules will published in the *Texas Register*.

The rule's adoption was conducted consistent with the procedures required under Texas Government Code § 2001 commonly known as the Administrative Procedures Act.

The new sections are adopted pursuant to the authority of Chapter 2306, Texas Government Code; and Section 42 of Internal Revenue Code of 1986, as amended, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs; and Executive Order AWR-92-3 (March 4, 1992), which provides this Department with the authority to make housing tax credit allocations in the State of Texas.

No other code, article or statute is affected by these new sections.

§49.1. Purpose and Authority; Program Statement; Allocation Goals.

(a) Purpose and Authority. The Rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the Department) of Housing Tax Credits authorized by applicable federal income tax laws. The Internal Revenue Code of 1986, §42, (the "Code") as amended, provides for credits against federal income taxes for owners of qualified low-income rental housing Developments. That section provides for the allocation of the available tax credit amount by state housing credit agencies. Pursuant to Chapter 2306, Subchapter DD, Texas Government Code, the Department is authorized to make Housing Credit Allocations for the State of Texas. As required by the Internal Revenue Code, §42(m)(1), the Department developed this Qualified Allocation Plan (QAP) which is set forth in §§49.1 - 49.23 of this title. Sections in this chapter establish procedures for applying for and obtaining an allocation of Housing Tax Credits, along with ensuring that the proper threshold criteria, selection criteria, priorities and preferences are followed in making such allocations.

(b) Program Statement. The Department shall administer the program to encourage the development and preservation of appropriate types of rental housing for households that have difficulty finding suitable, accessible, affordable rental housing in the private marketplace; maximize the number of suitable, accessible, affordable residential rental units added to the state's housing supply; prevent losses for any reason to the state's supply of suitable, accessible, affordable residential rental units by enabling the Rehabilitation of rental housing or by providing other preventive financial support; and provide for the participation of for-profit organizations and provide for and encourage the participation of nonprofit organizations in the acquisition, development and operation of accessible affordable housing developments in rural and urban communities. (§2306.6701)

(c) Allocation Goals. It shall be the goal of this Department and the Board, through these provisions, to encourage diversity through broad geographic allocation of tax credits within the state, and in accordance with the regional allocation formula; to promote maximum utilization of the available tax credit amount; and to allocate credits among as many different entities as practicable without diminishing the quality of the housing that is being built. The processes and criteria utilized to realize this goal are described in §49.8 and §49.9 of this title, without in any way limiting the effect or applicability of all other provisions of this title. (General Appropriation Act, Article VII, Rider 8(e))

§49.2. Coordination with Rural Agencies.

To ensure maximum utilization and optimum geographic distribution of tax credits in rural areas, and to provide for sharing of information, efficient procedures, and fulfillment of Development compliance requirements in rural areas, the Department will enter into a Memorandum of Understanding (MOU) or other agreement with the TX-USDA-RHS to coordinate on existing, Rehabilitation, and New Construction housing Developments financed by TX-USDA-RHS; and will jointly administer the Rural Regional Allocation with the Texas Office of Rural Community Affairs (ORCA). Through participation in hearings and meetings, ORCA will assist in developing all Threshold, Selection and Underwriting Criteria applied to Applications eligible for the Rural Regional Allocation. The Criteria will be approved by that Agency. To ensure that the Rural Regional Allocation receives a sufficient volume of eligible Applications, the Department and ORCA shall jointly implement outreach, training, and rural area capacity building efforts. (§2306.6723)

§49.3. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Administrative Deficiencies--The absence of information or a document from the Application as is required under §§49.5, 49.6, 49.8(d) and 49.9(g) - (j) of this title, unless determined by the Department as unable to be corrected.

(2) Affiliate--An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with any other Person, and specifically shall include parents or subsidiaries. Affiliates also include all General Partners, Special Limited Partners and Principals with an ownership interest unless the entity is an experienced developer as described in §49.9(i)(21)(B) of this title.

(3) Agreement and Election Statement--A document in which the Development Owner elects, irrevocably, to fix the Applicable Percentage with respect to a building or buildings, as that in effect for the month in which the Department and the Development Owner enter into a binding agreement as to the housing credit dollar amount to be allocated to such building or buildings.

(4) Applicable Fraction--The fraction used to determine the Qualified Basis of the qualified low-income building, which is the smaller of the Unit fraction or the floor space fraction, all determined as provided in the Code, §42(c)(1).

(5) Applicable Percentage--The percentage used to determine the amount of the Housing Tax Credit for any Development (New Construction, Reconstruction, and/or Rehabilitation), as defined more fully in the Code, §42(b).

(A) For purposes of the Application, the Applicable Percentage will be projected at:

(i) 40 basis points over the current applicable percentage for 70 percent present value credits, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department, or

(ii) 15 basis points over the current applicable percentage for 30 percent present value credits, pursuant to §42(b) of the Code for the month in which the Application is submitted to the Department.

(B) For purposes of making a credit recommendation at any other time, the Applicable Percentage will be based in order of priority on:

(i) The percentage indicated in the Agreement and Election Statement, if executed; or

(ii) The actual applicable percentage as determined by the Code, §42(b), if all or part of the Development has been placed in service and for any buildings not placed in service the percentage will be the actual percentage as determined by the Code, §42(b) for the most current month; or

(iii) The percentage as calculated in subparagraph (A) of this paragraph if the Agreement and Election Statement has not been executed and no buildings have been placed in service.

(6) Applicant--Any Person or Affiliate of a Person who files a Pre-Application or an Application with the Department requesting a Housing Credit Allocation. (§2306.6702)

(7) Application--An application, in the form prescribed by the Department, filed with the Department by an Applicant, including any exhibits or other supporting material. (§2306.6702)

(8) Application Acceptance Period--That period of time during which Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department as more fully described in §49.9(a) and §49.21 of this title. For Tax-Exempt Bond Developments this period is the date the Volume 1 and 2 are submitted or the date the reservation is issued by the Texas Bond Review Board, whichever is earlier, and for Rural Rescue Applications this is that period of time stated in the Rural Rescue Policy.

(9) Application Round--The period beginning on the date the Department begins accepting Applications for the State Housing Credit Ceiling and continuing until all available Housing Tax Credits from the State Housing Credit Ceiling (as stipulated by the Department) are allocated, but not extending past the last day of the calendar year. (§2306.6702)

(10) Application Submission Procedures Manual--The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for the filing of Pre-Applications and Applications for Housing Tax Credits.

(11) Area--

(A) The geographic area contained within the boundaries of:

(i) An incorporated place or

(ii) Census Designated Place (CDP) as established by the U.S. Census Bureau for the most recent Decennial Census.

(B) For Developments located outside the boundaries of an incorporated place or CDP, the Development shall take up the Area characteristics of the incorporated place or CDP whose boundary is nearest to the Development site.

(12) Area Median Gross Income (AMGI)--Area median gross household income, as determined for all purposes under and in accordance with the requirements of the Code, §42.

(13) At-Risk Development--a Development that: (§2306.6702)

(A) has received the benefit of a subsidy in the form of a below-market interest rate loan, interest rate reduction, rental subsidy, Section 8 housing assistance payment, rental supplement payment, rental assistance payment, or equity incentive under at least one of the following federal laws, as applicable:

(i) Sections 221(d)(3) and (5), National Housing Act (12 U.S.C. §17151);

(ii) Section 236, National Housing Act (12 U.S.C. §1715z-1);

(iii) Section 202, Housing Act of 1959 (12 U.S.C. §1701q);

(iv) Section 101, Housing and Urban Development Act of 1965 (12 U.S.C. §1701s);

(v) The Section 8 Additional Assistance Program for housing Developments with HUD-Insured and HUD-Held Mortgages administered by the United States Department of Housing and Urban Development;

(vi) The Section 8 Housing Assistance Program for the Disposition of HUD-Owned Projects administered by the United States Department of Housing and Urban Development;

(vii) Sections 514, 515, and 516, Housing Act of 1949 (§42U.S.C. §§1484, 1485, and 1486); or

(viii) Section 42, of the Internal Revenue Code of 1986 (26 U.S.C. §42), and

(B) Is subject to the following conditions:

(i) The stipulation to maintain affordability in the contract granting the subsidy is nearing expiration (expiration will occur within two calendar years of July 31 of the year the Application is submitted); or

(ii) The federally insured mortgage on the Development is eligible for prepayment or is nearing the end of its mortgage term (the term will end within two calendar years of July 31 of the year the Application is submitted).

(C) An Application for a Development that includes the demolition of the existing Units which have received the financial ben-

efit described in subparagraph (A) of this paragraph will not qualify as an At-Risk Development unless the redevelopment will include the same site.

(D) Developments must be at risk of losing all affordability from all of the financial benefits available on the Development, provided such benefit constitutes a subsidy, described in subparagraph (A) of this paragraph on the site. However, Developments that have an opportunity to retain or renew any of the financial benefit described in subparagraph (A) of this paragraph must retain or renew all possible financial benefit to qualify as an At-Risk Development.

(E) Nearing expiration on a requirement to maintain affordability includes Developments eligible to request a qualified contract under §42 of the Code. Evidence must be provided in the form of a copy of the recorded LURA, the first years IRS Forms 8609 for all buildings showing Part II completed and, if applicable, documentation from the original application regarding the right of first refusal.

(14) Bedroom--A portion of a Unit which is no less than 100 square feet; has no width or length less than 8 feet; has at least one window that provides exterior access; and has at least one closet that is not less than 2 feet deep and 3 feet wide and high enough to accommodate 5 feet of hanging space. A den, study or other similar space that could reasonably function as a bedroom and meets this definition is considered a bedroom.

(15) Board--The governing Board of the Department. (§2306.004)

(16) Carryover Allocation--An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(C) and Treasury Regulations, §1.42-6.

(17) Carryover Allocation Document--A document issued by the Department, and executed by the Development Owner, pursuant to §49.14(a) of this title.

(18) Carryover Allocation Procedures Manual--The manual produced and amended from time to time by the Department which sets forth procedures, forms, and guidelines for filing Carryover Allocation requests.

(19) Code--The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the United States Department of the Treasury or the Internal Revenue Service.

(20) Colonia--A geographic Area located in a county some part of which is within 150 miles of the international border of this state and that:

(A) Has a majority population composed of individuals and families of low-income and very low-income, based on the federal Office of Management and Budget poverty index, and meets the qualifications of an economically distressed Area under §17.921, Water Code; or

(B) Has the physical and economic characteristics of a colonia, as determined by the Texas Water Development Board.

(21) Commitment Notice--A notice issued by the Department to a Development Owner pursuant to §49.13 of this title and also referred to as the "commitment."

(22) Community Revitalization Plan--A published document under any name, approved and adopted by the local governing body by ordinance or resolution, that targets specific geographic areas for revitalization and development of residential developments.

(23) Competitive Housing Tax Credits--Tax credits available from the State Housing Credit Ceiling.

(24) Compliance Period--With respect to a building, the period of 15 taxable years, beginning with the first taxable year of the Credit Period pursuant to the Code, §42(i)(1).

(25) Control--(including the terms "Controlling," "Controlled by", and/or "under common Control with") the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, whether through the ownership of voting securities, by contract or otherwise, including specifically ownership of more than 50% of the General Partner interest in a limited partnership, or designation as a managing General Partner of a limited liability company.

(26) Cost Certification Procedures Manual--The manual produced, and amended from time to time, by the Department which sets forth procedures, forms, and guidelines for filing requests for IRS Form(s) 8609 for Developments placed in service under the Housing Tax Credit Program.

(27) Credit Period--With respect to a building within a Development, the period of ten taxable years beginning with the taxable year the building is placed in service or, at the election of the Development Owner, the succeeding taxable year, as more fully defined in the Code, §42(f)(1).

(28) Department--The Texas Department of Housing and Community Affairs, an agency of the State of Texas, established by Chapter 2306, Texas Government Code, including Department employees and/or the Board. (§2306.004)

(29) Determination Notice--A notice issued by the Department to the Development Owner of a Tax-Exempt Bond Development which states that the Development may be eligible to claim Housing Tax Credits without receiving an allocation of Housing Tax Credits from the State Housing Credit Ceiling because it satisfies the requirements of this QAP; sets forth conditions which must be met by the Development before the Department will issue the IRS Form(s) 8609 to the Development Owner; and specifies the Department's determination as to the amount of tax credits necessary for the financial feasibility of the Development and its viability as a rent restricted Development throughout the affordability period. (§42(m)(1)(D))

(30) Developer--Any Person entering into a contract with the Development Owner to provide development services with respect to the Development and receiving a fee for such services (which fee cannot exceed the limits identified in §49.9(d)(6)(B) of this title) and any other Person receiving any portion of such fee, whether by subcontract or otherwise.

(31) Development--A proposed qualified and/or approved low-income housing project, as defined by the Code, §42(g), for New Construction, Reconstruction, or Rehabilitation, that consists of one or more buildings containing multiple Units, and that, if the Development shall consist of multiple buildings, is financed under a common plan and is owned by the same Person for federal tax purposes, and the buildings of which are either:

(A) Located on a single site or contiguous site; or

(B) Located on scattered sites and contain only rent-restricted units. (§2306.6702)

(32) Development Consultant--Any Person (with or without ownership interest in the Development) who provides professional services relating to the filing of an Application, Carryover Allocation Document, and/or cost certification documents.

(33) Development Owner--Any Person, General Partner, or Affiliate of a Person who owns or proposes a Development or expects to acquire Control of a Development under a purchase contract approved by the Department. (§2306.6702)

(34) Development Site--The area, or if scattered site areas, for which the Development is proposed to be located and is to be under control pursuant to §49.9(h)(7)(A) of this title.

(35) Development Team--All Persons or Affiliates thereof that play a role in the Development, construction, Rehabilitation, management and/or continuing operation of the subject Property, which will include any Development Consultant and Guarantor.

(36) Economically Distressed Area--Consistent with §17.921 of Texas Water Code, an Area in which:

(A) Water supply or sewer services are inadequate to meet minimal needs of residential users as defined by Texas Water Development Board rules;

(B) Financial resources are inadequate to provide water supply or sewer services that will satisfy those needs; and

(C) An established residential subdivision was located on June 1, 1989, as determined by the Texas Water Development Board.

(37) Eligible Basis--With respect to a building within a Development, the building's Eligible Basis as defined in the Code, §42(d).

(38) Executive Award and Review Advisory Committee ("The Committee")--A Departmental committee that will develop funding priorities and make funding and allocation recommendations to the Board based upon the evaluation of an Application in accordance with the housing priorities as set forth in Chapter 2306 of the Texas Government Code, and as set forth herein, and the ability of an Applicant to meet those priorities. (§2306.1112)

(39) Existing Residential Development--Any Development Site which contains 4 or more existing residential Units at the time the Volume I is submitted to the Department.

(40) Extended Housing Commitment--An agreement between the Department, the Development Owner and all successors in interest to the Development Owner concerning the extended housing use of buildings within the Development throughout the extended use period as provided in the Code, §42(h)(6). The Extended Housing Commitment with respect to a Development is expressed in the LURA applicable to the Development.

(41) General Contractor--One who contracts for the construction or Rehabilitation of an entire Development, rather than a portion of the work. The General Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the subcontractors. This party may also be referred to as the "contractor."

(42) General Partner--That partner, or collective of partners, identified as the general partner of the partnership that is the Development Owner and that has general liability for the partnership. In addition, unless the context shall clearly indicate the contrary, if the Development Owner in question is a limited liability company, the term "General Partner" shall also mean the managing member or other party with management responsibility for the limited liability company.

(43) Governmental Entity--Includes federal or state agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts and other similar entities.

(44) Governmental Instrumentality--A legal entity such as a housing authority of a city or county, a housing finance corporation, or a municipal utility, which is created by a local political subdivision under statutory authority and which instrumentality is authorized to transact business for the political subdivision.

(45) Guarantor--Means any Person that provides, or is anticipated to provide, a guaranty for the equity or debt financing for the Development.

(46) Historically Underutilized Businesses (HUB)--Any entity defined as a historically underutilized business with its principal place of business in the State of Texas in accordance with Chapter 2161, Texas Government Code.

(47) Housing Credit Agency--A Governmental Entity charged with the responsibility of allocating Housing Tax Credits pursuant to the Code, §42. For the purposes of this title, the Department is the sole "Housing Credit Agency" of the State of Texas.

(48) Housing Credit Allocation--An allocation by the Department to a Development Owner for a specific Application of Housing Tax Credits in accordance with the provisions of this title.

(49) Housing Credit Allocation Amount--With respect to a Development or a building within a Development, that amount the Department determines to be necessary for the financial feasibility of the Development and its viability as a Development throughout the affordability period and which it allocates to the Development.

(50) Housing Tax Credit ("tax credits")--A tax credit allocated, or for which a Development may qualify, under the Housing Tax Credit Program, pursuant to the Code, §42. (§2306.6702)

(51) HUD--The United States Department of Housing and Urban Development, or its successor.

(52) Ineligible Building Types--Those Developments which are ineligible, pursuant to this QAP, for funding under the Housing Tax Credit Program, as follows:

(A) Hospitals, nursing homes, trailer parks, dormitories (or other buildings that will be predominantly occupied by students) or other facilities which are usually classified as transient housing (other than certain specific types of transitional housing for the homeless and single room occupancy units, as provided in the Code, §42(i)(3)(B)(iii) and (iv)) are not eligible. However, structures formerly used as hospitals, nursing homes or dormitories are eligible for Housing Tax Credits if the Development involves the conversion of the building to a non-transient multifamily residential Development. Refer to IRS Revenue Ruling 98-47 for clarification of assisted living.

(B) Any Qualified Elderly Development or age restricted buildings in Intergenerational Housing Developments of two stories or more that does not include elevator service for any Units or living space above the first floor.

(C) Any Qualified Elderly Development or age restricted buildings in Intergenerational Housing Developments with any Units having more than two bedrooms.

(D) Any Development with building(s) with four or more stories that does not include an elevator.

(E) Any Development that violates the Integrated Housing Rule of the Department, §1.15 of this title.

(F) Any Development located in an Urban/Exurban Area involving any New Construction (excluding New Construction of non-residential buildings) of additional Units (other than a Qualified Elderly Development, a Development composed entirely of single family dwellings, and certain specific types of transitional housing for the homeless and single room occupancy units, as provided in the

Code, §42(i)(3)(B)(iii) and (iv)) in which any of the designs in clauses (i) - (iv) of this subparagraph are proposed. For Applications involving a combination of single family detached dwellings and multifamily dwellings, the percentages in this subparagraph do not apply to the single family detached dwellings. For Intergenerational Housing Applications, the percentages in this subparagraph do not apply to buildings that are restricted the age requirements of a Qualified Elderly Development. An Application may reflect a total of Units for a given bedroom size greater than the percentages stated below to the extent that the increase is only to reach the next highest number divisible by four.

(i) More than 30% of the total Units are one bedroom Units; or

(ii) More than 55% of the total Units are two bedroom Units; or

(iii) More than 40% of the total Units are three bedroom Units; or

(iv) More than 5% of the total Units in the Development with four or more bedrooms.

(G) Any Development that includes age restricted units that are not consistent with the Intergenerational Housing definition and policy or the definition of a Qualified Elderly Development.

(53) Intergenerational Housing--Housing that includes specific units that are restricted to the age requirements of a Qualified Elderly Development and specific units that are not age restricted in the same Development that:

(A) Have separate and specific buildings exclusively for the age restricted units,

(B) Have separate and specific leasing offices and leasing personnel exclusively for the age restricted units,

(C) Have separate and specific entrances, and other appropriate security measures for the age restricted units,

(D) Provide shared social service programs that encourage intergenerational activities but also provide separate amenities for each age group,

(E) Share the same Development site,

(F) Are developed and financed under a common plan and owned by the same Person for federal tax purposes; and

(G) Meet the requirements of the federal Fair Housing Act.

(54) IRS--The Internal Revenue Service, or its successor.

(55) Land Use Restriction Agreement (LURA)--An agreement between the Department and the Development Owner which is binding upon the Development Owner's successors in interest, that encumbers the Development with respect to the requirements of this chapter, Chapter 2306, Texas Government Code, and the requirements of the Code, §42. (§2306.6702)

(56) Local Political Subdivision--A county or municipality (city) in Texas. For purposes of §49.9(i)(5) of this title, a local political subdivision may act through a Government Instrumentality such as a housing authority, housing finance corporation, or municipal utility even if the Government Instrumentality's creating statute states that the entity is not itself a "political subdivision."

(57) Material Noncompliance--As defined in §60 of this title.

(58) Minority Owned Business--A business entity at least 51% of which is owned by members of a minority group or, in the case of a corporation, at least 51% of the shares of which are owned by members of a minority group, and that is managed and Controlled by members of a minority group in its daily operations. Minority group includes women, African Americans, American Indians, Asian Americans, and Mexican Americans and other Americans of Hispanic origin. (§2306.6734)

(59) New Construction--Any Development or portion of the Development that does not meet the definition of Rehabilitation or Reconstruction.

(60) ORCA--Office of Rural Community Affairs, as established by Chapter 487 of Texas Government Code. (§2306.6702)

(61) Person--Means, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization or entity of any nature whatsoever and shall include any group of Persons acting in concert toward a common goal, including the individual members of the group.

(62) Persons with Disabilities--A person who:

(A) Has a physical, mental or emotional impairment that:

(i) Is expected to be of a long, continued and indefinite duration,

(ii) Substantially impedes his or her ability to live independently, and

(iii) Is of such a nature that the disability could be improved by more suitable housing conditions,

(B) Has a developmental disability, as defined in the Developmental Disabilities Assistance and Bill of Rights Act (§42U.S.C. §15002), or

(C) Has a disability, as defined in 24 CFR §5.403.

(63) Persons with Special Needs--Persons with alcohol and/or drug addictions, Colonia residents, Persons with Disabilities, victims of domestic violence, persons with HIV/AIDS, homeless populations and migrant farm workers.

(64) Pre-Application--A preliminary application, in a form prescribed by the Department, filed with the Department by an Applicant prior to submission of the Application, including any required exhibits or other supporting material, as more fully described in this title. (§2306.6704)

(65) Pre-Application Acceptance Period--That period of time during which Competitive Housing Tax Credit Pre-Applications for a Housing Credit Allocation from the State Housing Credit Ceiling may be submitted to the Department.

(66) Principal--the term Principal is defined as Persons that will exercise Control over a partnership, corporation, limited liability company, trust, or any other private entity. In the case of:

(A) Partnerships, Principals include all General Partners, Special Limited Partners and Principals with ownership interest;

(B) Corporations, Principals include any officer authorized by the board of directors to act on behalf of the corporation, including the president, vice president, secretary, treasurer and all other executive officers, and each stock holder having a ten percent or more interest in the corporation; and

(C) Limited liability companies, Principals include all managing members, members having a ten percent or more interest in the limited liability company or any officer authorized to act on behalf of the limited liability company.

(67) Property--The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

(68) Qualified Allocation Plan (QAP)--

(A) As defined in the Code, §42(m)(1)(B): Any plan which sets forth selection criteria to be used to determine housing priorities of the housing credit agency which are appropriate to local conditions; which also gives preference in allocating housing credit dollar amounts among selected projects to projects serving the lowest-income tenants, projects obligated to serve qualified tenants for the longest periods, and projects which are located in qualified census tracts and the development of which contributes to a concerted community revitalization plan; and which provides a procedure that the agency (or an agent or other private contractor of such agency) will follow in monitoring for noncompliance with the provisions of the Code, §42 and in notifying the Internal Revenue Service of such noncompliance which such agency becomes aware of and in monitoring for noncompliance with habitability standards through regular site visits.

(B) As defined in §2306.6702, Texas Government Code: A plan adopted by the board that provides the threshold, scoring, and underwriting criteria based on housing priorities of the Department that are appropriate to local conditions; provides a procedure for the Department, the Department's agent, or another private contractor of the Department to use in monitoring compliance with the qualified allocation plan and this subchapter; and consistent with §2306.6710(e), gives preference in housing tax credit allocations to Developments that, as compared to the other Developments:

(i) When practicable and feasible based on documented, committed, and available third-party funding sources, serve the lowest-income tenants per housing tax credit; and

(ii) Produce for the longest economically feasible period the greatest number of high quality units committed to remaining affordable to any tenants who are income-eligible under the low-income housing tax credit program.

(69) Qualified Basis--With respect to a building within a Development, the building's Eligible Basis multiplied by the Applicable Fraction, within the meaning of the Code, §42(c)(1).

(70) Qualified Census Tract--Any census tract which is so designated by the Secretary of HUD in accordance with the Code, §42(d)(5)(C)(ii).

(71) Qualified Elderly Development--A Development which meets the requirements of the federal Fair Housing Act and:

(A) Is intended for, and solely occupied by, individuals 62 years of age or older; or

(B) Is intended and operated for occupancy by at least one individual 55 years of age or older per Unit, where at least 80% of the total housing Units are occupied by at least one individual who is 55 years of age or older; and where the Development Owner publishes and adheres to policies and procedures which demonstrate an intent by the owner and manager to provide housing for individuals 55 years of age or older. (See §42U.S.C. §3607(b)).

(72) Qualified Market Analyst--A real estate appraiser certified or licensed by the Texas Appraiser Licensing and Certification Board, a real estate consultant, or other professional currently active in the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality written report. The individual's performance, experience, and educational background will provide the general basis for determining competency as a Market Analyst. Competency will be determined by the Department, in its sole discretion. The Qualified Market Analyst must be a Third Party.

(73) Qualified Nonprofit Organization--An organization that is described in the Code, §501(c)(3) or (4), as these cited provisions may be amended from time to time, that is exempt from federal income taxation under the Code, §501(a), that is not affiliated with or Controlled by a for profit organization, and includes as one of its exempt purposes the fostering of low-income housing within the meaning of the Code, §42(h)(5)(C). A Qualified Nonprofit Organization may select to compete in one or more of the Set-Asides, including, but not limited to, the nonprofit Set-Aside, the At-Risk Development Set-Aside and the TX-USDA-RHS Allocation. (§2306.6729)

(74) Qualified Nonprofit Development--A Development in which a Qualified Nonprofit Organization (directly or through a partnership or wholly-owned subsidiary) holds a controlling interest, materially participates (within the meaning of the Code, §469(h), as it may be amended from time to time) in its development and operation throughout the Compliance Period, and otherwise meets the requirements of the Code, §42(h)(5). (§2306.6729)

(75) Reconstruction--The demolition of one or more residential buildings in an Existing Residential Development and the re-construction of the Units on the Development Site. Developments proposing adaptive re-use or proposing to increase the total number of Units in the Existing Residential Development are not considered Reconstruction.

(76) Reference Manual--That certain manual, and any amendments thereto, produced by the Department which sets forth reference material pertaining to the Housing Tax Credit Program.

(77) Rehabilitation--The improvement or modification of an Existing Residential Development through alterations, incidental additions or enhancements. Rehabilitation includes repairs necessary to correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices. Rehabilitation may include demolition within the existing walls of a structure to increase or decrease the number of Units or Bedrooms, but does not include demolition or adaptive reuse.

(78) Related Party--As defined, (§2306.6702)

(A) The following individuals or entities:

(i) The brothers, sisters, spouse, ancestors, and descendants of a person within the third degree of consanguinity, as determined by Chapter 573, Texas Government Code;

(ii) A person and a corporation, if the person owns more than 50 percent of the outstanding stock of the corporation;

(iii) Two or more corporations that are connected through stock ownership with a common parent possessing more than 50 percent of:

(I) The total combined voting power of all classes of stock of each of the corporations that can vote;

(II) The total value of shares of all classes of stock of each of the corporations; or

(III) The total value of shares of all classes of stock of at least one of the corporations, excluding, in computing that voting power or value, stock owned directly by the other corporation;

(iv) A grantor and fiduciary of any trust;

(v) A fiduciary of one trust and a fiduciary of another trust, if the same person is a grantor of both trusts;

(vi) A fiduciary of a trust and a beneficiary of the trust;

(vii) A fiduciary of a trust and a corporation if more than 50 percent of the outstanding stock of the corporation is owned by or for:

(I) The trust; or

(II) A person who is a grantor of the trust;

(viii) A person or organization and an organization that is tax-exempt under the Code, §501(a), and that is controlled by that person or the person's family members or by that organization;

(ix) A corporation and a partnership or joint venture if the same persons own more than:

(I) 50 percent of the outstanding stock of the corporation; and

(II) 50 percent of the capital interest or the profits' interest in the partnership or joint venture;

(x) An S corporation and another S corporation if the same persons own more than 50 percent of the outstanding stock of each corporation;

(xi) An S corporation and a C corporation if the same persons own more than 50 percent of the outstanding stock of each corporation;

(xii) A partnership and a person or organization owning more than 50 percent of the capital interest or the profits' interest in that partnership; or

(xiii) Two partnerships, if the same person or organization owns more than 50 percent of the capital interests or profits' interests.

(B) Nothing in this definition is intended to constitute the Department's determination as to what relationship might cause entities to be considered "related" for various purposes under the Code.

(79) Rules--The Department's Housing Tax Credit Program Qualified Allocation Plan and Rules as presented in this title.

(80) Rural Area--An area that is located:

(A) Outside the boundaries of a primary metropolitan statistical area or a metropolitan statistical area;

(B) Within the boundaries of a primary metropolitan statistical area or a metropolitan statistical area, if the statistical area has a population of 20,000 or less and does not share a boundary with an urban area; or

(C) In an Area that is eligible for New Construction funding by TX-USDA-RHS; or

(D) On a specific Development Site eligible for Rehabilitation funding by TX-USDA-RHS as evidenced by an executed TX-USDA-RHS letter indicating TX-USDA-RHS has received a Consent Request, also referred to as a Preliminary Submittal, as described in 7 CFR 3560.406. (§2306.6702)

(81) Rural Development--A Development located within a Rural Area. A Rural Development may not exceed 76 Units if involving any New Construction (excluding New Construction of non-residential buildings).

(82) Selection Criteria--Criteria used to determine housing priorities of the State under the Housing Tax Credit Program as specifically defined in §49.9(i) of this title.

(83) Set-Aside--A reservation of a portion of the available Housing Tax Credits under the State Housing Credit Ceiling to provide financial support for specific types of housing or geographic locations or serve specific types of Applications or Applicants as permitted by the Qualified Allocation Plan on a priority basis. (§2306.6702)

(84) State Housing Credit Ceiling--The limitation on the aggregate amount of Housing Credit Allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with the Code, §42(h)(3)(C).

(85) Student Eligibility--Per the Code, §42(i)(3)(D), A unit shall not fail to be treated as a low-income unit merely because it is occupied:

(A) By an individual who is:

(i) A student and receiving assistance under Title IV of the Social Security Act (§42U.S.C. §§601 et seq.), or

(ii) Enrolled in a job training program receiving assistance under the Job Training Partnership Act (29 USCS §§1501 et seq., generally; for full classification, consult USCS Tables volumes) or under other similar Federal, State, or local laws, or

(B) Entirely by full-time students if such students are:

(i) Single parents and their children and such parents and children are not dependents (as defined in §152) of another individual, or

(ii) Married and file a joint return.

(86) Tax-Exempt Bond Development--A Development requesting or having been awarded housing tax credits and which receives a portion of its financing from the proceeds of tax-exempt bonds which are subject to the state volume cap as described in the Code, §42(h)(4), such that the Development does not receive an allocation of tax credit authority from the State Housing Credit Ceiling.

(87) Third Party--A Third Party is a Person who is not an:

(A) Applicant, General Partner, Developer, or General Contractor, or

(B) An Affiliate or a Related Party to the Applicant, General Partner, Developer or General Contractor, or

(C) Person(s) receiving any portion of the contractor fee or developer fee.

(88) Threshold Criteria--Criteria used to determine whether the Development satisfies the minimum level of acceptability for consideration as specifically defined in §49.9(h) of this title. (§2306.6702)

(89) Total Housing Development Cost--The total of all costs incurred or to be incurred by the Development Owner in acquiring, constructing, rehabilitating and financing a Development, as determined by the Department based on the information contained in the Application. Such costs include reserves and any expenses attributable to commercial areas. Costs associated with the sale or use of Housing Tax Credits to raise equity capital shall also be included in the Total Housing Development Cost. Such costs include but are

not limited to syndication and partnership organization costs and fees, filing fees, broker commissions, related attorney and accounting fees, appraisal, engineering, and the environmental site assessment.

(90) TX-USDA-RHS--The Rural Housing Services (RHS) of the United States Department of Agriculture (USDA) serving the State of Texas (formerly known as TxFmHA) or its successor.

(91) Unit--Any residential rental unit consisting of an accommodation including a single room used as an accommodation on a non-transient basis, that contains complete physical facilities and fixtures for living, sleeping, eating, cooking (such as a microwave), and sanitation. (§2306.6702) For purposes of completing the Rent Schedule for loft or studio type Units (which still must meet the definition of Bedroom), a Unit with 649 square feet or less is considered an efficiency Unit, a Unit with 650 to 899 square feet is considered not more than a one-bedroom Unit, a Unit with 900 to 999 square feet is considered not more than a two-bedroom Unit, a Unit with 1000 to 1199 square feet is considered not more than a three-bedroom Unit, and a Unit with 1200 square feet or more is considered a four bedroom Unit.

(92) Urban/Exurban Area--Non-Rural Areas located within the boundaries of a metropolitan Area as designated by the US Office of Management and Budget as of November 1, 2006, or for Tax-Exempt Bond Developments or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.), the date Volume III is submitted to the Department.

§49.4. State Housing Credit Ceiling.

The Department shall determine the State Housing Credit Ceiling for each calendar year as provided in the Code, §42(h)(3)(C), using such information and guidance as may be made available by the Internal Revenue Service. The Department shall publish each such determination in the *Texas Register* within 30 days after the receipt of such information as is required for that purpose by the Internal Revenue Service. The aggregate amount of commitments of Housing Credit Allocations made by the Department during any calendar year shall not exceed the State Housing Credit Ceiling for such year as provided in the Code, §42. As permitted by the Code, §42(h)(4), Housing Credit Allocations made to Tax-Exempt Bond Developments are not included in the State Housing Credit Ceiling.

§49.5. Ineligibility; Disqualification and Debarment; Certain Applicant and Development Standards; Representation by Former Board Member or Other Person; Due Diligence, Sworn Affidavit; Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment.

(a) Ineligibility. An Application is ineligible if:

(1) The Applicant, Development Owner, Developer or Guarantor has been or is barred, suspended, or terminated from procurement in a state or federal program or listed in the List of Parties Excluded from Federal Procurement or Non-Procurement Programs; or (§2306.6721(c)(2))

(2) The Applicant, Development Owner, Developer or Guarantor has been convicted of a state or federal crime involving fraud, bribery, theft, misrepresentation of material fact, misappropriation of funds, or other similar criminal offenses within fifteen years preceding the Application deadline; or

(3) The Applicant, Development Owner, Developer or Guarantor at the time of Application is: subject to an enforcement or disciplinary action under state or federal securities law or by the NASD; is subject to a federal tax lien; or is the subject of an enforcement proceeding with any Governmental Entity; or

(4) The Applicant, Development Owner, Developer or Guarantor with any past due audits has not submitted those past due audits to the Department in a satisfactory format. A Person is not eligible to receive a commitment of Housing Tax Credits from the Department if any audit finding or questioned or disallowed cost is unresolved as of June 1 of each year, or for Tax-Exempt Bond Developments or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than 30 days after Volume III of the application is submitted; or

(5) (§2306.6703(a)(1)) At the time of Application or at any time during the two-year period preceding the date the Application Round begins (or for Tax-Exempt Bond Developments any time during the two-year period preceding the date the Application is submitted to the Department), the Applicant or a Related Party is or has been:

(A) A member of the Board; or

(B) The Executive Director, a Deputy Executive Director, the Director of Multifamily Finance Production, the Director of Portfolio Management and Compliance, the Director of Real Estate Analysis, or a manager over housing tax credits employed by the Department.

(6) (§2306.6703(a)(2)) The Applicant proposes to replace in less than 15 years any private activity bond financing of the Development described by the Application, unless:

(A) The Applicant proposes to maintain for a period of 30 years or more 100 percent of the Development Units supported by Housing Tax Credits as rentrestricted and exclusively for occupancy by individuals and families earning not more than 50 percent of the Area Median Gross Income, adjusted for family size; and

(B) At least onethird of all the units in the Development are public housing units or Section 8 Development-based units; or,

(7) The Development is located in a municipality or in a valid Extra Territorial Jurisdiction (ETJ) of a municipality, or if located completely outside a municipality, a county, that has more than twice the state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins (or for Tax-Exempt Bond Developments at the time the reservation is made by the Texas Bond Review Board) unless the Applicant: (§2306.6703(a)(4))

(A) Has obtained prior approval of the Development from the governing body of the appropriate municipality or county containing the Development; and

(B) Has included in the Application a written statement of support from that governing body referencing this rule and authorizing an allocation of housing tax credits for the Development;

(C) For purposes of this paragraph, evidence under subparagraphs (A) and (B) of this paragraph must be received by the Department no later than April 2, 2007 (or for Tax-Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be considered) and may not be more than one year old from the date the Volume 1 is submitted to the Department; or

(8) The Applicant proposes to construct a new development proposing New Construction (excluding New Construction of non-residential buildings) that is located one linear mile (measured by a straight line on a map) or less from a Development that: (§2306.6703(a)(3))

(A) Serves the same type of household as the new development, regardless of whether the development serves families,

elderly individuals, or another type of household (Intergenerational Housing is not a type of household as it relates to this restriction);

(B) Has received an allocation of Housing Tax Credits (including Tax-Exempt Bond Developments) for any New Construction at any time during the three-year period preceding the date the application round begins (or for Tax-Exempt Bond Developments the three-year period preceding the date the Volume I is submitted); and

(C) Has not been withdrawn or terminated from the Housing Tax Credit Program.

(D) An Application is not ineligible under this paragraph if:

(i) The Development is using federal HOPE VI funds received through the United States Department of Housing and Urban Development; locally approved funds received from a public improvement district or a tax increment financing district; funds provided to the state under the Cranston-Gonzalez National Affordable Housing Act (§42U.S.C. §12701 et seq.); or funds provided to the state and participating jurisdictions under the Housing and Community Development Act of 1974 (§42U.S.C. §5301 et seq.); or

(ii) The Development is located in a county with a population of less than one million; or

(iii) The Development is located outside of a metropolitan statistical area; or

(iv) The local government where the Development is to be located has by vote specifically allowed the construction of a new Development located within one linear mile or less from a Development described under subparagraphs (A) - (C) of this paragraph. For purposes of this clause, evidence of the local government vote or evidence required by subparagraph (D) of this paragraph must be received by the Department no later than April 2, 2007 (or for Tax-Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be committed) and may not be more than one year old.

(E) In determining the age of an existing Development as it relates to the application of the three-year period, the Development will be considered from the date the Board took action on approving the allocation of tax credits. In dealing with ties between two or more Developments as it relates to this rule, refer to §49.9(j) of this title.

(9) A submitted Application has an entire Volume of the application missing; has excessive omissions of documentation from the Threshold Criteria or Uniform Application documentation; or is so unclear, disjointed or incomplete that a thorough review can not reasonably be performed by the Department, as determined by the Department. If an Application is determined ineligible pursuant to this section, the Application will be terminated without being processed as an Administrative Deficiency. To the extent that a review was able to be performed, specific reasons for the Department's determination of ineligibly will be included in the Termination letter to the Applicant.

(b) Disqualification and Debarment. The Department will disqualify an Application, and/or debar a Person (see §2306.6721, Texas Government Code), if it is determined by the Department that any issues identified in the paragraphs of this subsection exist. The Department may debar a Person for one year from the date of debarment, or until the violation causing the debarment has been remedied, whichever term is longer, if the Department determines the facts warrant it. Causes for disqualification and debarment include: (§2306.6721)

(1) The provision of fraudulent information, knowingly falsified documentation, or other intentional or negligent material misrepresentation in the Application or other information submitted to the Department at any stage of the evaluation or approval process; or

(2) The Applicant, Development Owner, Developer or Guarantor or anyone that has Controlling ownership interest in the Development Owner, Developer or Guarantor that is active in the ownership or Control of one or more other rent restricted rental housing properties in the state of Texas administered by the Department is in Material Noncompliance with the LURA (or any other document containing an Extended Housing Commitment) or the program rules in effect for such property as further described in §60 of this title on May 1, 2007 or for Tax-Exempt Bond Developments or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than 30 days after Volume III of the application is submitted; (§2306.6721(c)(3)) or

(3) The Applicant, Development Owner, Developer or Guarantor or anyone that has Controlling ownership interest in the Development Owner, Developer or Guarantor that is active in the ownership or Control of one or more other rent restricted rental housing properties outside of the state of Texas has an incidence of Material Noncompliance with the LURA or the program rules in effect for such tax credit property as further described in §60 of this title on May 1, 2007 or for Tax-Exempt Bond Developments or other Applications not applying for Housing Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) no later than 30 days after Volume III of the application is submitted; or

(4) The Applicant, Development Owner, Developer, or any Guarantor, or any Affiliate of such entity has been a Principal of any entity that failed to make all loan payments to the Department in accordance with the terms of the loan, as amended, or was otherwise in default with any provisions of any loans from the Department.

(5) The Applicant or the Development Owner that is active in the ownership or Control of one or more tax credit properties in the state of Texas has failed to pay in full any fees within 30 days of when they were billed by the Department, as further described in §49.20 of this title; or

(6) The Applicant or a Related Party and any Person who is active in the construction, Rehabilitation, ownership, or Control of the proposed Development, including a General Partner or contractor, and a Principal or Affiliate of a General Partner or contractor, or an individual employed as a lobbyist by the Applicant or a Related Party, communicates with any Board member during the period of time beginning on the date an Application is filed and ending on the date the Board makes a final decision with respect to any approval of that Application, unless the communication takes place at any board meeting or public hearing held with respect to that Application. Communication with Department staff must be in accordance with §49.9(b) of this title; violation of the communication restrictions of §49.9(b) is also a basis for disqualification and/or debarment. (§2306.1113)

(7) It is determined by the Department's General Counsel that there is evidence that establishes probable cause to believe that an Applicant, Development Owner, Developer, or any of their employees or agents has violated a state revolving door or other standard of conduct or conflict of interest statute, including §2306.6733, Texas Government Code, or a section of Chapter 572, Texas Government Code, in making, advancing, or supporting the Application.

(8) Applicants may be ineligible as further described in §49.17(d)(8) of this title.

(9) The Applicant, Development Owner, Developer, Guarantor, or any Affiliate of such entity whose previous funding contracts or commitments have been partially or fully deobligated due to a failure to meet contractual obligations during the 12 months prior to the submission of the applications.

(10) The Applicant, Development Owner, Developer, Guarantor, or any Affiliate of such entity whose pre-development award from the Department has not been repaid for the Development at the time of Carryover Allocation or Bond closing.

(c) Certain Applicant and Development Standards. Notwithstanding any other provision of this section, the Department may not allocate tax credits to a Development proposed by an Applicant if the Department determines that: (§2306.223)

(1) The Development is not necessary to provide needed decent, safe, and sanitary housing at rental prices that individuals or families of low and very low-income or families of moderate income can afford;

(2) The Development Owner undertaking the proposed Development will not supply well-planned and well-designed housing for individuals or families of low and very low-income or families of moderate income;

(3) The Development Owner is not financially responsible;

(4) The Development Owner has contracted, or will contract for the proposed Development with, a Developer that:

(A) Is on the Department's debarred list, including any parts of that list that are derived from the debarred list of the United States Department of Housing and Urban Development;

(B) Has breached a contract with a public agency and failed to cure that breach; or

(C) Misrepresented to a subcontractor the extent to which the Developer has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Developer's participation in contracts with the agency and the amount of financial assistance awarded to the Developer by the agency;

(5) The financing of the housing Development is not a public purpose and will not provide a public benefit; and

(6) The Development will be undertaken outside the authority granted by this chapter to the Department and the Development Owner.

(d) Representation by Former Board Member or Other Person. (§2306.6733)

(1) A former Board member or a former executive director, deputy executive director, director of multifamily finance production, director of portfolio management and compliance, director of real estate analysis or manager over housing tax credits previously employed by the Department may not:

(A) For compensation, represent an Applicant or one of its Related Parties for an allocation of tax credits before the second anniversary of the date that the Board member's, director's, or manager's service in office or employment with the Department ceased;

(B) Represent any Applicant or a Related Party of an Applicant or receive compensation for services rendered on behalf of any Applicant or Related Party regarding the consideration of an Application in which the former board member, director, or manager participated during the period of service in office or employment with the Department, either through personal involvement or because the matter was within the scope of the board member's, director's, or manager's official responsibility; or for compensation, communicate directly with a member of the legislative branch to influence legislation on behalf of an Applicant or Related Party before the second anniversary of the date that the board member's, director's, or manager's service in office or employment with the Department ceased.

(2) A Person commits a criminal offense if the Person violates §2306.6733. An offense under this section is a Class A misdemeanor.

(e) Due Diligence, Sworn Affidavit. In exercising due diligence in considering information of possible ineligibility, possible grounds for disqualification and debarment, Applicant and Development standards, possible improper representation or compensation, or similar matters, the Department may request a sworn affidavit or affidavits from the Applicant, Development Owner, Developer, Guarantor, or other persons addressing the matter. If an affidavit determined to be sufficient by the Department is not received by the Department within seven business days of the date of the request by the Department, the Department may terminate the Application.

(f) Appeals and Administrative Deficiencies for Ineligibility, Disqualification and Debarment. An Applicant or Person found ineligible, disqualified, debarred or otherwise terminated under subsections (a) - (e) of this section will be notified in accordance with the Administrative Deficiency process described in §49.9(d)(4) of this title. They may also utilize the appeals process described in §49.17(b) of this title. (§2306.6721(d))

§49.6. Site and Development Restrictions: Floodplain; Ineligible Building Types; Scattered Site Limitations; Credit Amount; Limitations on the Size of Developments; Limitations on Rehabilitation Costs; Unacceptable Sites; Appeals and Administrative Deficiencies for Site and Development Restrictions.

(a) Floodplain. Any Development proposing New Construction located within the 100 year floodplain as identified by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps must develop the site so that all finished ground floor elevations are at least one foot above the flood plain and parking and drive areas are no lower than six inches below the floodplain, subject to more stringent local requirements. If no FEMA Flood Insurance Rate Maps are available for the proposed Development, flood zone documentation must be provided from the local government with jurisdiction identifying the 100 year floodplain. No buildings or roads that are part of a Development proposing Rehabilitation, with the exception of Developments with federal funding assistance from HUD or TX USDA-RHS, will be permitted in the 100 year floodplain unless they already meet the requirements established in this subsection for New Construction.

(b) Ineligible Building Types. Applications involving Ineligible Building Types as defined in §49.3(52) of this title will not be considered for allocation of tax credits.

(c) Scattered Site Limitations. Consistent with §49.3(31) of this title, a Development must be financed under a common plan, be owned by the same Person for federal tax purposes, and the buildings may be either located on a single site or contiguous site, or be located on scattered sites and contain only rent-restricted units.

(d) Credit Amount. The Department shall issue tax credits only in the amount needed for the financial feasibility and viability of a Development throughout the affordability period. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the Development by the Department, or that the Development will qualify for and be able to claim Housing Tax Credits. The Department will limit the allocation of tax credits to no more than $1.2 million per Development. The Department shall not allocate more than $2 million of tax credits in any given Application Round to any Applicant, Developer, Related Party or Guarantor; Housing Tax Credits approved by the Board during the 2007 calendar year, including commitments from the 2007 Credit

Ceiling and forward commitments from the 2008 Credit Ceiling, are applied to the credit cap limitation for the 2007 Application Round. In order to encourage the capacity enhancement of developers in rural areas, the Department will prorate the credit amount allocated in situations where an Application is submitted in the Rural Regional Allocation and the Development has 76 Units or less. The Department will prorate the credits based on the percentage ownership, if there is an ownership interest, or the proportional percentage of the developer fee received, if this applies to a Developer without an ownership interest. To be considered for this provision, a copy of a Joint Venture Agreement and narrative on how this builds the capacity of the inexperienced developers is required. Tax-Exempt Bond Development Applications are not subject to these Housing Tax Credit limitations, and Tax-Exempt Bond Developments will not count towards the total limit on tax credits per Applicant. The limitation does not apply (§2306.6711(b)):

(1) To an entity which raises or provides equity for one or more Developments, solely with respect to its actions in raising or providing equity for such Developments (including syndication related activities as agent on behalf of investors);

(2) To the provision by an entity of "qualified commercial financing" within the meaning of the Code (without regard to the 80% limitation thereof);

(3) To a Qualified Nonprofit Organization or other not-for-profit entity, to the extent that the participation in a Development by such organization consists only of the provision of loan funds, grants or social services; and

(4) To a Development Consultant with respect to the provision of consulting services, provided the Development Consultant fee received for such services does not exceed 10% of the fee to be paid to the Developer (or 20% for Qualified Nonprofit Developments), or $150,000, whichever is greater.

(e) Limitations on the Size of Developments.

(1) The minimum Development size will be 16 Units if the Development involves Housing Tax Credits. The minimum Development size will be 4 Units if the funding source only involves the Housing Trust Fund or HOME Program.

(2) Rural Developments involving any New Construction (excluding New Construction of non-residential buildings) will be limited to 76 Units. Rural Developments involving only Rehabilitation do not have a size limitation.

(3) Developments involving any New Construction (excluding New Construction of non-residential buildings), that are not Tax-Exempt Bond Developments, will be limited to 252 Total Units, wherein the maximum Department administered Units will be limited to 200 Units. Tax-Exempt Bond Developments will be limited to 252 Total Units. These maximum Unit limitations also apply to those Developments which involve a combination of Rehabilitation, Reconstruction, and New Construction. Developments that consist solely of acquisition/Rehabilitation or Rehabilitation only may exceed the maximum Unit restrictions.

(4) For those Developments which are a second phase or are otherwise adjacent to an existing tax credit Development unless such proposed Development is being constructed to provide replacement of previously existing affordable multifamily units on its site (in a number not to exceed the original units being replaced, unless a market study supports the absorption of additional units) or that were originally located within a one mile radius from the proposed Development, the combined Unit total for the Developments may not exceed the maximum allowable Development size, unless the first phase has been completed and has attained Sustaining Occupancy (as defined in §1.31 of this title) for at least six months.

(f) Limitations on the Location of Developments. Staff will only recommend, and the Board may only allocate, housing tax credits from the Credit Ceiling to more than one Development from the Credit Ceiling in the same calendar year if the Developments are, or will be, located more than one linear mile apart as determined by the Department. If the Board forward commits credits from the following year's allocation of credits, the Development is considered to be in the calendar year in which the Board votes, not in the year of the Credit Ceiling. This limitation applies only to communities contained within counties with populations exceeding one million (which for calendar year 2007 are Harris, Dallas, Tarrant and Bexar Counties). For purposes of this rule, any two sites not more than one linear mile apart are deemed to be "in a single community." (§2306.6711) This restriction does not apply to the allocation of housing tax credits to Developments financed through the Tax-Exempt Bond program, including the Tax-Exempt Bond Developments under review and existing Tax-Exempt Bond Developments in the Department's portfolio. (§2306.67021)

(g) Limitations of Development in Certain Census Tracts. Staff will not recommend and the Board will not allocate housing tax credits for a Competitive Housing Tax Credit or Tax Exempt Bond Development located in a census tract that has more than 30% Housing Tax Credit Units per total households in the census tract as established by the U.S. Census Bureau for the most recent Decennial Census unless the Applicant:

(1) In an area whose population is less than 100,000;

(2) Proposes only Reconstruction or Rehabilitation (excluding New Construction of non-residential buildings); or,

(3) Submits to the Department an approval of the Development referencing this rule in the form of a resolution from the governing body of the appropriate municipality or county containing the Development. For purposes of this paragraph, evidence of the local government approval must be received by the Department no later than April 2, 2007 (or for Tax-Exempt Bond Developments no later than 14 days before the Board meeting where the credits will be committed). These ineligible census tracts are outlined in the 2007 Housing Tax Credit Site Demographic Characteristics Report.

(h) Limitations on Developments Proposing to Qualify for a 30% increase in Eligible Basis. Staff will only recommend a 30% increase in Eligible Basis:

(1) If the Development proposing to build in a Hurricane Rita Gulf Opportunity Zone (Rita GO Zone), which was designated as a Difficult to Develop Area as determined by HB4440, is able to be placed in service by December 31, 2008 (or date as revised by the Internal Revenue Service) as certified in the Application; or,

(2) The Development is located in a Qualified Census Tract that has less than 40% Housing Tax Credit Units per households in the tract as established by the U.S. Census Bureau for the most recent Decennial Census. Developments located in a Qualified Census Tract that has in excess of 40% Housing Tax Credit Units per households in the tract are not eligible to qualify for a 30% increase in Eligible Basis, which would otherwise be available for the Development site pursuant to the Code, §42(d)(5)(C), unless the Development is proposing only Reconstruction or Rehabilitation (excluding New Construction of non-residential buildings.These ineligible Qualified Census Tracts are outlined in the 2007 Housing Tax Credit Site Demographic Characteristics Report.

(i) Rehabilitation Costs. Developments involving Rehabilitation must establish that the Rehabilitation will substantially improve

the condition of the housing and will involve at least $12,000 per Unit in direct hard costs (including site work, contingency, contractor profit, overhead and general requirements) unless financed with TX-USDA-RHS in which case the minimum is $6,000.

(j) Unacceptable Sites. Developments will be ineligible if the Development is located on a site that is determined to be unacceptable by the Department.

(k) Appeals and Administrative Deficiencies for Site and Development Restrictions. An Application or Development found to be in violation under subsections (a) - (h) of this section will be notified in accordance with the Administrative Deficiency process described in §49.9(d)(4) of this title. They may also utilize the appeals process described in §49.17(b) of this title.

§49.7. Regional Allocation Formula; Set-Asides; Redistribution of Credits.

(a) Regional Allocation Formula. As required by §2306.111(d), Texas Government Code, the Department uses a regional distribution formula developed by the Department to distribute credits from the State Housing Credit Ceiling to all urban/exurban areas and rural areas. The formula is based on the need for housing assistance, and the availability of housing resources in those urban/exurban areas and rural areas, and the Department uses the information contained in the Department's annual state low income housing plan and other appropriate data to develop the formula. This formula establishes separate targeted tax credit amounts for rural areas and urban/exurban areas within each of the Uniform State Service Regions. Each Uniform State Service Region's targeted tax credit amount will be published on the Department's web site. The regional allocation for rural areas is referred to as the Rural Regional Allocation and the regional allocation for urban/exurban areas is referred to as the Urban/Exurban Regional Allocation. Developments qualifying for the Rural Regional Allocation must meet the Rural Development definition. At least 5% of each region's allocation for each calendar year shall be allocated to Developments which are financed through TX-USDA-RHS, that meet the definition of a Rural Development, do not exceed 76 Units if proposing any New Construction (excluding New Construction of non-residential buildings), and have filed an "Intent to Request 2007 Housing Tax Credits" form by the Pre-Application submission deadline. These Developments will be attributed to the Rural Regional Allocation in each region where they are located. Developments financed through TX-USDA-RHS's 538 Guaranteed Rural Rental Housing Program will be considered under this set-aside. Any Rehabilitation or Reconstruction of an existing 515 development that retains the 515 loan and restrictions, regardless of the source or nature of additional financing, will be considered under this set-aside. Commitments of 2007 Housing Tax Credits issued by the Board in 2006 will be applied to each Set-Aside, Rural Regional Allocation, Urban/Exurban Regional Allocation and TX-USDA-RHS Allocation for the 2007 Application Round as appropriate.

(b) Set-Asides. An Applicant may elect to compete in as many of the following Set-Asides for which the proposed Development qualifies: (§2306.111(d))

(1) At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Developments which meet the requirements of the Code, §42(h)(5). Qualified Nonprofit Organizations must have the Controlling interest in the Qualified Nonprofit Development applying for this Set-Aside. If the organization's Application is filed on behalf of a limited partnership, the Qualified Nonprofit Organization must be the controlling managing General Partner. If the organization's Application is filed on behalf of a limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member. Additionally, a Qualified Nonprofit Development submitting an Application in the nonprofit set-aside must have the nonprofit entity or its nonprofit affiliate or subsidiary be the Developer or a co-Developer as evidenced in the development agreement. (§2306.6729 and §2306.6706(b))

(2) At least 15% of the allocation to each Uniform State Service Region will be set aside for allocation under the At-Risk Development Set-Aside. Through this Set-Aside, the Department, to the extent possible, shall allocate credits to Applications involving the preservation of Developments designated as At-Risk Developments as defined in §49.3(13) of this title. (§2306.6714). To qualify as an At-Risk Development, the Applicant must provide evidence that it either is not eligible to renew, retain or preserve any portion of the financial benefit described in §49.3(13)(A) of this title, or provide evidence that it will renew, retain or preserve the financial benefit described in §49.3(13)(A) of this title; and must have filed an "Intent to Request 2007 Housing Tax Credits" form by the Pre-Application submission deadline.

(c) Redistribution of Credits. (§2306.111(d)) If any amount of housing tax credits remain after the initial commitment of housing tax credits among the Rural Regional Allocation and Urban/Exurban Regional Allocation within each Uniform State Service Region and among the Set-Asides, the Department may redistribute the credits amongst the different regions and Set-Asides depending on the quality of Applications submitted as evaluated under the factors described in §49.9(d) of this title, the need to most closely achieve regional allocation goals and then the level of demand exhibited in the Uniform State Service Regions during the Allocation Round. However as described in subsection (b)(1) of this section, no more than 90% of the State's Housing Credit Ceiling for the calendar year may go to Developments which are not Qualified Nonprofit Developments. If credits will be transferred from a Uniform State Service Region which does not have enough qualified Applications to meet its regional credit distribution amount, then those credits will be apportioned to the other Uniform State Service Regions.

§49.8. Pre-Applications for Competitive Housing Tax Credits: Submission; Communication with Departments Staff; Evaluation Process; Threshold Criteria and Review; Results (§2306.6704).

(a) Pre-Application Submission. Any Applicant requesting a Housing Credit Allocation may submit a Pre-Application to the Department during the Pre-Application Acceptance Period along with the required Pre-Application Fee as described in §49.20 of this title. Only one Pre-Application may be submitted by an Applicant for each site under the State Housing Credit Ceiling. The Pre-Application submission is a voluntary process. While the Pre-Application Acceptance Period is open, Applicants may withdraw their Pre-Application and subsequently file a new Pre-Application utilizing the original Pre-Application Fee that was paid as long as no evaluation was performed by the Department. The Department is authorized to request the Applicant to provide additional information it deems relevant to clarify information contained in the Pre-Application or to submit documentation for items it considers to be Administrative Deficiencies. The rejection of a Pre-Application shall not preclude an Applicant from submitting an Application with respect to a particular Development or site at the appropriate time.

(b) Communication with the Department. Applicants that submit a Pre-Application are restricted from communication with Department staff as provided in §49.9(b) of this title. (§2306.1113)

(c) Pre-Application Evaluation Process. Eligible Pre-Applications will be evaluated for Pre-Application Threshold Criteria. Applications that are associated with a TX-USDA-RHS Development are not exempt from Pre-Application and are eligible to compete for the Pre-Application points further outlined in §49.9(i) of this title. Pre-Applications that are found to have Administrative Deficiencies will be

handled in accordance with §49.9(d)(4) of this title. Department review at this stage is limited and not all issues of eligibility and threshold are reviewed at Pre-Application. Acceptance by staff of a Pre-Application does not ensure that an Applicant satisfies all Application eligibility, Threshold or documentation requirements. The Department is not responsible for notifying an Applicant of potential areas of ineligibility or threshold deficiencies at the time of Pre-Application.

(d) Pre-Application Threshold Criteria and Review. Applicants submitting a Pre-Application will be required to submit information demonstrating their satisfaction of the Pre-Application Threshold Criteria. The Pre-Applications not meeting the Pre-Application Threshold Criteria will be terminated and the Applicant will receive a written notice to the effect that the Pre-Application Threshold Criteria have not been met. The Department shall not be responsible for the Applicant's failure to meet the Pre-Application Threshold Criteria and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Pre-Application Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. The Pre-Application Threshold Criteria include:

(1) Submission of a "Pre-Application Submission Form" and "Certification of Pre-Application Itemized Self-Score". The applicant may not change the Self-Score unless requested by the Department in a Deficiency Notice; and

(2) Evidence of property control through March 1, 2007 as evidenced by the documentation required under §49.9(h)(7)(A) of this title.

(3) Evidence in the form of a certification that all of the notifications required under this paragraph have been made. Requests for Neighborhood Organizations under subparagraph (A) of this paragraph must be made by the deadlines described in that clause; notifications under subparagraph (C) of this paragraph must be made prior to the close of the Pre-Application Acceptance Period. (§2306.6704) Evidence of notification must meet the requirements identified in subparagraph (B) of this paragraph to all of the individuals and entities identified in subparagraph (C) of this paragraph. (§2306.6704)

(A) The Applicant must request Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site as follows:

(i) No later than December 8, 2006, the Applicant must e-mail, fax or mail with registered receipt a completed, "Neighborhood Organization Request" letter as provided in the Pre-Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an Area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an Area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request neighborhood organizations from that source in the same format.

(ii) If no reply letter is received from the local elected officials by January 1, 2007, then the Applicant must certify to that fact in the "Pre-Application Notification Certification Form" provided in the Pre-Application.

(iii) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected officials, or that the Applicant has knowledge of as of Pre-Application Submission in the "Pre-Application Notification Certification Form" provided in the Pre-Application.

(B) Not later than the date the Pre-Application is submitted, notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt return or similar tracking mechanism in the format required in the "Pre-Application Notification Template" provided in the Pre-Application. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials. Evidence of Notification is required in the form of a certification in the "Pre-Application Notification Certification Form" provided in the Pre-Application, although it is encouraged that Applicants retain proof of notifications in the event that the Department requires proof of Notification. Officials to be notified are those officials in office at the time the Pre-Application is submitted.

(i) Neighborhood Organizations on record with the city, state or county whose boundaries include the proposed Development Site as identified in subparagraph A)(iii) of this paragraph.

(ii) Superintendent of the school district containing the Development;

(iii) Presiding officer of the board of trustees of the school district containing the Development;

(iv) Mayor of any municipality containing the Development;

(v) All elected members of the governing body of any municipality containing the Development;

(vi) Presiding officer of the governing body of the county containing the Development;

(vii) All elected members of the governing body of the county containing the Development;

(viii) State senator of the district containing the Development; and

(ix) State representative of the district containing the Development.

(C) Each such notice must include, at a minimum, all of the following:

(i) The Applicant's name, address, individual contact name and phone number;

(ii) The Development name, address, city and county;

(iii) A statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(iv) Statement of whether the Development proposes New Construction, Reconstruction, or Rehabilitation;

(v) The type of Development being proposed (single family homes, duplex, apartments, townhomes, highrise etc.) and population being served (family, Intergenerational Housing, or elderly);

(vi) The approximate total number of Units and approximate total number of low-income Units;

(vii) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the percentage of Units that are market rate;

(viii) The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Pre-Application, which are subject to change as annual changes in the area median income occur; and

(ix) The expected completion date if credits are awarded.

(e) Pre-Application Results. Only Pre-Applications which have satisfied all of the Pre-Application Threshold Criteria requirements set forth in subsection (d) of this section and §49.9(i)(13) of this title, will be eligible for Pre-Application points. The order and scores of those Developments released on the Pre-Application Submission Log do not represent a commitment on the part of the Department or the Board to allocate tax credits to any Development and the Department bears no liability for decisions made by Applicants based on the results of the Pre-Application Submission Log. Inclusion of a Development on the Pre-Application Submission Log does not ensure that an Applicant will receive points for a Pre-Application.

§49.9. Application: Submission; Communication with Department Employees; Adherence to Obligations; Evaluation Process for Competitive Applications Under the State Housing Credit Ceiling; Evaluation Process for Tax-Exempt Bond Development Applications; Evaluation Process for Rural Rescue Applications Under the 2008 Credit Ceiling; Experience Pre-Certification Procedures; Threshold Criteria; Selection Criteria; Tiebreaker Factors; Staff Recommendations.

(a) Application Submission. Any Applicant requesting a Housing Credit Allocation or a Determination Notice must submit an Application, and the required Application fee as described in §49.20 of this title, to the Department during the Application Acceptance Period. Only complete Applications will be accepted. All required volumes must be appropriately bound as required by the Application Submission Procedures Manual and fully complete for submission and received by the Department not later than 5:00 p.m. on the date the Application is due. A searchable electronic copy of all required volumes and exhibits, unless otherwise indicated in the Application Submission Procedures Manual, must be submitted in the format of a single file presented in the order they appear in the hard copy of the complete Application on a CD-R clearly labeled with the report type, Development name, and Development location is required for submission and received by the Department not later than 5:00 p.m. on the date the Application is due. Only one Application may be submitted for a site in an Application Round. While the Application Acceptance Period is open, Applicants may withdraw their Application and subsequently file a new Application utilizing the original Pre-Application Fee that was paid as long as no evaluation was performed by the Department. The Department is authorized, but not required, to request the Applicant to provide additional information it deems relevant to clarify information contained in the Application or to submit documentation for items it considers to be an Administrative Deficiency, including ineligibility criteria, site and development restrictions, and threshold and selection criteria documentation. (§2306.6708) An Applicant may not change or supplement an Application in any manner after the filing deadline, and may not add any set-asides, increase their credit amount, or revise their unit mix (both income levels and bedroom mixes), except in response to a direct request from the Department to remedy an Administrative Deficiency as further described in §49.3(1) of this title or by amendment of an Application after a commitment or allocation of tax credits as further described in §49.17(d) of this title.

(b) Communication with Department Employees. Communication with Department staff by Applicants that submit a Pre-Application or Application must follow the following requirements. During the period beginning on the date a Development Pre-Application or Application is filed and ending on the date the Board makes a final decision with respect to any approval of that Application, the Applicant or a Related Party, and any Person that is active in the construction, rehabilitation, ownership or Control of the proposed Development including a General Partner or contractor and a Principal or Affiliate of a General Partner or contractor, or individual employed as a lobbyist by the Applicant or a Related Party, may communicate with an employee of the Department about the Application orally or in written form, which includes electronic communications through the Internet, so long as that communication satisfies the conditions established under paragraphs (1) - (3) of this subsection. Section 49.5(b)(6) of this title applies to all communication with Board members. Communications with Department employees is unrestricted during any board meeting or public hearing held with respect to that Application.

(1) The communication must be restricted to technical or administrative matters directly affecting the Application;

(2) The communication must occur or be received on the premises of the Department during established business hours (emails may be sent and received after business hours);

(3) A record of the communication must be maintained by the Department and included with the Application for purposes of board review and must contain the date, time, and means of communication; the names and position titles of the persons involved in the communication and, if applicable, the person's relationship to the Applicant; the subject matter of the communication; and a summary of any action taken as a result of the communication. (§2306.1113)

(c) Adherence to Obligations. (§2306.6720, General Appropriation Act, Article VII, Rider 8(a)) All representations, undertakings and commitments made by an Applicant in the application process for a Development, whether with respect to Threshold Criteria, Selection Criteria or otherwise, shall be deemed to be a condition to any Commitment Notice, Determination Notice, or Carryover Allocation for such Development, the violation of which shall be cause for cancellation of such Commitment Notice, Determination Notice, or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Development, shall be enforceable even if not reflected in the LURA. All such representations are enforceable by the Department and the tenants of the Development, including enforcement by administrative penalties for failure to perform, as stated in the representations and in accordance with the LURA. Effective December 1, 2006, if a Development Owner does not produce the Development as represented in the Application and in any amendments approved by the Department subsequent to the Application, or does not provide the necessary evidence for any points received by the required deadline:

(1) The Development Owner must provide a plan to the Department, for approval and subsequent implementation, that incorporates additional amenities to compensate for the non-conforming components; and

(2) The Board will opt either to terminate the Application and rescind the Commitment Notice, Determination Notice or Carryover Allocation Agreement as applicable or the Department must:

(A) Reduce the score for Applications for tax credits that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development by ten points for the two Application Rounds concurrent to, or following, the date that the non-conforming aspect, or lack of financing, was identified by the Department; and

(B) Prohibit eligibility to apply for tax credits for a Tax-Exempt Bond Development that are submitted by an Applicant or Affiliate related to the Development Owner of the non-conforming Development for 12 months from the date that the non-conforming aspect, or lack of financing, was identified by the Department.

(d) Evaluation Process for Competitive Applications Under the State Housing Credit Ceiling. Applications submitted for competitive consideration under the State Housing Credit Ceiling will be reviewed according to the process outlined in this subsection. An Application, during any of these stages of review, may be determined to be ineligible as further described in §49.5; Applicants will be promptly notified in these instances.

(1) Set-Aside and Selection Criteria Review. All Applications will first be reviewed as described in this paragraph. Applications will be confirmed for eligibility for Set-Asides. Then, each Application will be preliminarily scored according to the Selection Criteria listed in subsection (i) of this section. When a particular scoring criterion involves multiple points, the Department will award points to the proportionate degree, in its determination, to which a proposed Development complied with that criterion. As necessary to complete this process only, Administrative Deficiencies may be issued to the Applicant. This process will generate a preliminary Department score for every application.

(2) Priority Review Assessment. Each Application will be assessed based on either the Applicant's self-score or the Department's preliminary score, region, and any Set-Asides that the Application indicates it is eligible for, consistent with paragraph (5) of this subsection. Those Applications that appear to be most competitive will be designated as "priority" Applications. Applications that do not appear to be competitive may not be reviewed in detail for Eligibility and Threshold Criteria during the Application Round. The designation of priority is not a stage of the application pursuant to §49.11(a)(7) of this title, and the designations will not be posted to the Department's website until final scoring notices are issued.

(3) Eligibility and Threshold Criteria Review. Applications that are designated as "priority" from the Priority Review Assessment will be evaluated for eligibility under §§49.5(a)(7) - (9), (c), (e), and (f), and 49.6 of this title. The remaining portions of the Eligibility Review under §49.5 of this chapter will be performed in the Compliance Evaluation and Eligibility Review as described under paragraph (7) of this subsection. Priority Applications will also be evaluated against the Threshold Criteria under subsection (h)(1) - (4), (7)(A) and (B), (8), (9), (11), and (15) of this section, at minimum. The remaining portions of the Threshold Criteria review may be performed in the Underwriting Evaluation and Criteria review for financial feasibility by the Department's Real Estate Analysis Division as described under paragraph (6) of this subsection. Applications not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in which event the Applicant is given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. Not all Applications will be reviewed in detail for Threshold Criteria. To the extent that the review of Threshold Criteria documentation, or submission of Administrative Deficiency documentation, alters the score assigned to the Application, Applicants will be notified of their final score. As Applications are evaluated under this Review process, a final score by the Department may remove the Application from "priority" status at which point other Applications may be designated as "priority" and reviewed under this paragraph.

(4) Administrative Deficiencies. If an Application contains Administrative Deficiencies pursuant to §49.3(1) of this title which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Selection, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made several times. The Department staff will request clarification or correction in a deficiency notice in the form of an email, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. If Administrative Deficiencies are not clarified or corrected to the satisfaction of the Department within five business days of the deficiency notice date, then for competitive Applications under the State Housing Credit Ceiling five points shall be deducted from the Selection Criteria score for each additional day the deficiency remains unresolved. If deficiencies are not clarified or corrected within seven business days from the deficiency notice date, then the Application shall be terminated. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period.

(5) Subsequent Evaluation of Prioritized Applications and Methodology for Award Recommendations to the Board. The Department will assign, as herein described, Developments for review for financial feasibility by the Department's Real Estate Analysis Division--in general these will be those applications identified as "priority". This prioritization order will also be used in making recommendations to the Board as follows:

(A) Assignments will be determined by first selecting the Applications with the highest scores in the At-Risk Set-Aside and TX-USDA-RHS Allocation within each Uniform State Service Region until the minimum requirements stated in §49.7(b) of this title are attained.

(B) Remaining funds within each Uniform State Service Region will then be selected based on the highest scoring Developments in each of the 26 sub-regions, regardless of Set-Aside, in accordance with the requirements under §49.7(a) of this title, without exceeding the credit amounts available for a Rural Regional Allocation and Urban/Exurban Regional Allocation in each region.

(C) Funds for the Rural Regional Allocation or Urban/Exurban Regional Allocation for which there are more requests for credits than remaining credits available will be combined in each Uniform State Service Regions. If the next eligible application in the Rural Allocation or Urban/Exurban for a given Uniform State Service Region is less than the remaining credits in a region, then that application is selected; however, if both Rural and Urban/Exurban areas in the region have Applications that are requesting less than the remaining credits in that Uniform State Service Region, then Application in the sub-region whose shortfall of credits being recommended would have been the most significant portion of their targeted sub-regional allocation will be selected. All credits still remaining will be combined with the remaining credits from all other regions and will be allocated to an Application in the sub-region whose shortfall of credits being recommended would have been the most significant portion of their targeted sub-regional allocation. However, once a region's awarded

credits exceeds the total allocation for that region no other applications will be selected.

(D) After this priority review has occurred, staff will review priority applications to ensure that at least 10% of the priority applications are qualified Nonprofits to satisfy the Nonprofit Set-Aside. If 10% is not met, then the Department will add the highest Qualified Nonprofits statewide until the 10% Nonprofit Set-Aside is met. Selection for each of the Set-Asides will take precedence over selection for the Rural Regional Allocation and Urban/Exurban Regional Allocation. Funds for the Rural Regional Allocation or Urban/Exurban Regional Allocation within a region, for which there are no eligible feasible applications, will be redistributed as provided in §49.7(c) of this title, Redistribution of Credits. If the Department determines that an allocation recommendation would cause a violation of the $2 million limit described in §49.6(d) of this title, the Department will make its recommendation by selecting the Development(s) that most effectively satisfies(y) the Department's goals in meeting set-aside and regional allocation goals. Based on Application rankings, the Department shall continue to underwrite Applications until the Department has processed enough Applications satisfying the Department's underwriting criteria to enable the allocation of all available housing tax credits according to regional allocation goals and Set-Aside categories. To enable the Board to establish a Waiting List, the Department shall underwrite as many additional Applications as necessary to ensure that all available housing tax credits are allocated within the period required by law. (§2306.6710(a), (b) and (d); §2306.111)

(6) Underwriting Evaluation and Criteria. The Department shall underwrite an Application to determine the financial feasibility of the Development and an appropriate level of housing tax credits. In determining an appropriate level of housing tax credits, the Department shall, at a minimum, evaluate the cost of the Development based on acceptable cost parameters as adjusted for inflation and as established by historical final cost certifications of all previous housing tax credit allocations for the county in which the Development is to be located; if certifications are unavailable for the county, then the metropolitan statistical area in which the Development is to be located; or if certifications are unavailable under the county or the metropolitan statistical area, then the Uniform State Service Region in which the Development is to be located. Underwriting of a Development will include a determination by the Department, pursuant to the Code, §42, that the amount of credits recommended for commitment to a Development is necessary for the financial feasibility of the Development and its long-term viability as a qualified rent restricted housing property. In making this determination, the Department will use the Underwriting Rules and Guidelines, §1.32 of this title. To the extent that the review of Administrative Deficiency documentation during this review alters the score assigned to the Application, Applicants will be re-notified of their final score. Receipt of feasibility points under §49.9(i)(1) of this title does not ensure that an Application will be considered feasible during the feasibility evaluation by the Real Estate Analysis Division and conversely, a Development may be found feasible during the feasibility evaluation by the Real Estate Analysis Division even if it did not receive points under subsection (i)(1) of this section. (§2306.6711(b); §2306.6710(d))

(A) The Department may have an external party perform the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation.

(B) The Department will reduce the Applicant's estimate of Developer's and/or Contractor fees in instances where these exceed the fee limits determined by the Department. In the instance where the Contractor is an Affiliate of the Development Owner and both parties are claiming fees, Contractor's overhead, profit, and general requirements, the Department shall be authorized to reduce the total fees estimated to a level that it determines to be reasonable under the circumstances. Further, the Department shall deny or reduce the amount of Housing Tax Credits allocated with respect to any portion of costs which it deems excessive or unreasonable. Excessive or unreasonable costs may include developer fee attributable to Related Party acquisition costs. The Department also may require bids or Third Party estimates in support of the costs proposed by any Applicant. The Developer's fee limits will be calculated as follows:

(i) New construction pursuant to §42(b)(1)(A) U.S.C, the developer fee cannot exceed 15% of the project's Total Eligible Basis, less developer fees, or 20% of the project's Total Eligible Basis, less developer fees if the Development proposes 49 total Units or less; and

(ii) Acquisition/rehabilitation developments that are eligible for acquisition credits pursuant to §42(b)(1)(B) U.S.C, the acquisition portion of the developer fee cannot exceed 15% of the existing structures acquisition basis, less developer fee, or 20% of the project's Total Eligible Basis, less developer fees if the Development proposes 49 total Units or less, and will be limited to 4% credits. The rehabilitation portion of the developer fee cannot exceed 15% of the total rehabilitation basis, less developer fee, or 20% of the project's Total Eligible Basis, less developer fees if the Development proposes 49 total Units or less.

(7) Compliance Evaluation and Eligibility Review. After the Department has determined which Developments will be reviewed for financial feasibility, those same Developments will be reviewed for evaluation of the compliance status by the Department's Portfolio Management and Compliance Division, in accordance with Chapter 60 of this title, and will be evaluated in detail for eligibility under §§49.5(a)(1) - (5), (b), and (d) of this title.

(8) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by the Department or its assigns. Such inspection will evaluate the site based upon the criteria set forth in the Site Evaluation form provided in the Application and the inspector shall provide a written report of such site evaluation. The evaluations shall be based on the condition of the surrounding neighborhood, including appropriate environmental and aesthetic conditions and proximity to retail, medical, recreational, and educational facilities, and employment centers. The site's appearance to prospective tenants and its accessibility via the existing transportation infrastructure and public transportation systems shall be considered. "Unacceptable" sites include, without limitation, those containing a non-mitigable environmental factor that may adversely affect the health and safety of the residents. For Developments applying under the TX-USDA-RHS Set-Aside, the Department may rely on the physical site inspection performed by TX-USDA-RHS.

(e) Evaluation Process for Tax-Exempt Bond Development Applications. Applications submitted for consideration as Tax-Exempt Bond Developments will be reviewed according to the process outlined in this subsection. An Application, during any of these stages of review, may be determined to be ineligible as further described in §49.5 of this title; Applicants will be promptly notified in these instances.

(1) Eligibility and Threshold Criteria Review. All Tax-Exempt Bond Development Applications will first be reviewed as described in this paragraph. Tax-Exempt Bond Development Applications will be confirmed for eligibility under §49.5 and §49.6 of this title and Applications will be evaluated in detail against the Thresh-

old Criteria. Tax-Exempt Bond Development Applications found to be ineligible and/or not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in which event the Applicant is given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. Not all Applications will be reviewed in detail for Threshold Criteria.

(2) Administrative Deficiencies. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies. Because the review for Eligibility, Threshold Criteria, and review for financial feasibility by the Department's Real Estate Analysis Division may occur separately, Administrative Deficiency requests may be made several times. The Department staff will request clarification or correction in a deficiency notice in the form of an e-mail, or if an e-mail address is not provided in the Application, by facsimile, and a telephone call to the Applicant and one other party identified by the Applicant in the Application advising that such a request has been transmitted. All Administrative Deficiencies shall be clarified or corrected to the satisfaction of the Department within five business days. Failure to resolve all outstanding deficiencies within 5 business days from the deficiency notice date will result in a penalty fee of $500 for each business day the deficiency remains unresolved. Applications with unresolved deficiencies after the 10th day from the issuance of the deficiency notice will be terminated. The Applicant will be responsible for the payment of fees accrued pursuant to this section regardless of any termination pursuant to this section. The time period for responding to a deficiency notice begins at the start of the business day following the deficiency notice date. Deficiency notices may be sent to an Applicant prior to or after the end of the Application Acceptance Period. The Application will not be presented to the Board for consideration until all outstanding fees have been paid.

(3) Underwriting and Compliance Evaluation and Criteria. The Department will assign all eligible Tax-Exempt Bond Development Applications meeting the eligibility and threshold requirements for review for financial feasibility by the Department's Real Estate Analysis Division, or the Department may have an external party perform the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation. The Department or external party shall underwrite an Application to determine the financial feasibility of the Development and an appropriate level of housing tax credits as further described in subsection (d)(6) of this section. Tax-Exempt Bond Development Applications will also be reviewed for evaluation of the compliance status by the Department's Portfolio Management and Compliance Division in accordance with Chapter 60 of this title.

(4) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by the Department or its assigns as further described in subsection (d)(8) of this section.

(f) Evaluation Process for Rural Rescue Applications Under the 2008 Credit Ceiling. Applications submitted for consideration as Rural Rescue Applications pursuant to §49.10(c) of this title under the 2008 Credit Ceiling will be reviewed according to the process outlined in this subsection. A Rural Rescue Application, during any of these stages of review, may be determined to be ineligible as further described in §49.5 of this title; Applicants will be promptly notified in these instances.

(1) Eligibility and Threshold Criteria Review. All Rural Rescue Applications will first be reviewed as described in this paragraph. Rural Rescue Applications will be confirmed for eligibility under §49.5 and §49.6 of this title, Set-Aside and Rural Rescue eligibility will be confirmed, and Applications will be evaluated in detail against the Threshold Criteria. Applications found to be ineligible and/or not meeting Threshold Criteria will be notified of any Administrative Deficiencies, in which event the Applicant is given an opportunity to correct such deficiencies. Applications not meeting Threshold Criteria after receipt and review of the Administrative Deficiency response will be terminated and the Applicant will be provided a written notice to that effect. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. Not all Applications will be reviewed in detail for Threshold Criteria.

(2) Selection Criteria Review. All Rural Rescue Applications will be evaluated against the Selection Criteria and a score will be assigned to the Application. The minimum score for Selection Criteria is not required to be achieved to be eligible.

(3) Administrative Deficiencies. If an Application contains deficiencies which, in the determination of the Department staff, require clarification or correction of information submitted at the time of the Application, the Department staff may request clarification or correction of such Administrative Deficiencies as further described in subsection (d)(4) of this section.

(4) Underwriting and Compliance Evaluation and Criteria. The Department will assign all eligible Rural Rescue Applications meeting the eligibility and threshold requirements for review for financial feasibility by the Department's Real Estate Analysis Division, or the Department may have an external party perform the underwriting evaluation to the extent it determines appropriate. The expense of any external underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation. The Department or external party shall underwrite an Application to determine the financial feasibility of the Development and an appropriate level of housing tax credits as further described in subsection (d)(6) of this section. Rural Rescue Development Applications will also be reviewed for evaluation of the previous participation by the Department's Portfolio Management and Compliance Division in accordance with Chapter 60 of this title.

(5) Site Evaluation. Site conditions shall be evaluated through a physical site inspection by the Department or its assigns as further described in subsection (d)(8) of this section.

(g) Experience Pre-Certification Procedures. No later than 14 days prior to the close of the Application Acceptance Period, an Applicant must submit the documents required in this subsection to obtain the required pre-certification. For Applications submitted for Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.) all of the documents in this section must be submitted with the Application. Upon receipt of the evidence required under this section, a certification from the Department will be provided to the Applicant for inclusion in their Application(s). Evidence must show that one of the Development Owner's General Partners, the Developer or their Principals have a record of successfully constructing or developing residential units (single family or multifamily) in the capacity of owner, General Partner or Developer. If a Public Housing Author-

ity organized an entity for the purpose of developing residential units the Public Housing Authority shall be considered a principal for the purpose of this requirement. If the individual requesting the certification was not the Development Owner, General Partner or Developer, but was the individual within one of those entities doing the work associated with the development of the units, the individual must show that the units were successfully developed as required below, and also provide written confirmation from the entity involved stating that the individual was the person responsible for the development. If rehabilitation experience is being claimed to qualify for an Application involving new construction, then the rehabilitation must have been substantial and involved at least $6,000 of direct hard cost per unit.

(1) The term "successfully" is defined as acting in a capacity as the owner, General Partner, or Developer of:

(A) At least 100 residential units or, if less than 100 residential units, 80 percent of the total number of Units the Applicant is applying to build (e.g. you must have 40 units successfully built to apply for 50 Units); or

(B) At least 36 residential units if the Development is a Rural Development; or

(C) At least 25 residential units if the Development has 36 or fewer total Units.

(2) One or more of the following documents must be submitted: American Institute of Architects (AIA) Document A111 - Standard Form of Agreement Between Owner & Contractor, AIA Document G704 - Certificate of Substantial Completion, IRS Form 8609, HUD Form 9822, development agreements, partnership agreements, or other documentation satisfactory to the Department verifying that the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals have the required experience. If submitting the IRS Form 8609, only one form per Development is required. The evidence must clearly indicate:

(A) That the Development has been completed (i.e. Development Agreements, Partnership Agreements, etc. must be accompanied by certificates of completion);

(B) That the names on the forms and agreements tie back to the Development Owner's General Partner, partner (or if Applicant is to be a limited liability company, the managing member), Developer or their Principals as listed in the Application; and

(C) The number of units completed or substantially completed.

(h) Threshold Criteria. The following Threshold Criteria listed in this subsection are mandatory requirements at the time of Application submission unless specifically indicated otherwise:

(1) Completion and submission of the Application, which includes the entire Uniform Application and any other supplemental forms which may be required by the Department. (§2306.1111)

(2) Completion and submission of the Site Packet as provided in the Application.

(3) Set-Aside Eligibility. Documentation must be provided that confirms eligibility for all Set-Asides under which the Application is seeking funding as required in the Application.

(4) Certifications. The "Certification Form" provided in the Application confirming the following items:

(A) A certification of the basic amenities selected for the Development. All Developments, must meet at least the minimum threshold of points. These points are not associated with the selection criteria points in subsection (i) of this section. The amenities selected must be made available for the benefit of all tenants. If fees in addition to rent are charged for amenities reserved for an individual tenant's use, then the amenity may not be included among those provided to satisfy this requirement. Developments must provide a minimum number of common amenities in relation to the Development size being proposed. The amenities selected must be selected from clause (ii) of this subparagraph and made available for the benefit of all tenants. Developments proposing Rehabilitation or proposing Single Room Occupancy will receive 1.5 points for each point item. Applications for non-contiguous scattered site housing, including New Construction, Reconstruction, Rehabilitation, and single-family design, will have the threshold test applied based on the number of Units per individual site, and must submit a separate certification for each individual site under control by the Applicant. Any future changes in these amenities, or substitution of these amenities, must be approved by the Department in accordance with §49.17(d) of this title and may result in a decrease in awarded credits if the substitution or change includes a decrease in cost, or in the cancellation of a Commitment Notice or Carryover Allocation if all of the Common Amenities claimed are no longer met.

(i) Applications must meet a minimum threshold of points (based on the total number of Units in the Development) as follows:

(I) Total Units are less than 13, 0 points are required to meet Threshold for Single Room Occupancy and 1 point is required to meet threshold for all other Developments;

(II) Total Units are between 13 and 24, 1 point is required to meet Threshold;

(III) Total Units are between 25 and 40, 3 points are required to meet Threshold;

(IV) Total Units are between 41 and 76, 6 points are required to meet Threshold;

(V) Total Units are between 77 and 99, 9 points are required to meet Threshold;

(VI) Total Units are between 100 and 149, 12 points are required to meet Threshold;

(VII) Total Units are between 150 and 199, 15 points are required to meet Threshold;

(VIII) Total Units are 200 or more, 18 points are required to meet Threshold.

(ii) Amenities for selection include those items listed in subclauses (I) - (XXIV) of this clause. Both Developments designed for families and Qualified Elderly Developments can earn points for providing each identified amenity unless the item is specifically restricted to one type of Development. All amenities must meet accessibility standards as further described in subparagraphs (D) and (F) of this paragraph. An Application can only count an amenity once, therefore combined functions (a library which is part of a community room) only count under one category. Spaces for activities must be sized appropriately to serve the anticipated population.

(I) Full perimeter fencing (2 points);

(II) Controlled gate access (1 point);

(III) Gazebo w/sitting area (1 point);

(IV) Accessible walking/jogging path separate from a sidewalk (1 point);

(V) Community laundry room with at least one front loading washer (1 point);

(VI) Emergency 911 telephones accessible and available to tenants 24 hours a day (2 points);

(VII) Barbecue grill and picnic table-at least one of each for every 50 Units (1 point);

(VIII) Covered pavilion that includes barbecue grills and tables (2 points);

(IX) Swimming pool (3 points);

(X) Furnished fitness center (2 points);

(XI) Equipped and functioning business center or equipped computer learning center with 1 computer for every 30 Units proposed in the Application, 1 printer for every 3 computers (with minimum of one printer), and 1 fax machine (2 points);

(XII) Furnished Community room (1 point);

(XIII) Library with an accessible sitting area (separate from the community room) (1 point);

(XIV) Enclosed sun porch or covered community porch/patio (2 points);

(XV) Service coordinator office in addition to leasing offices (1 point);

(XVI) Senior Activity Room (Arts and Crafts, etc.)--Only Qualified Elderly Developments Eligible (2 points);

(XVII) Health Screening Room (1 point);

(XVIII) Secured Entry (elevator buildings only)(1 point);

(XIX) Horseshoe pit, putting green or shuffleboard court-Only Qualified Elderly Developments Eligible (1 point);

(XX) Community Dining Room w/full or warming kitchen-Only Qualified Elderly Developments Eligible (3 points);

(XXI) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot--Only Family Developments Eligible (1 Point)

(XXII) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each-Only Family Developments Eligible (2 points);

(XXIII) Sport Court (Tennis, Basketball or Volleyball)-Only Family Developments Eligible (2 points); or

(XXIV) Furnished and staffed Children's Activity Center-Only Family Developments Eligible (3 points).

(B) A certification that the Development will have all of the following Unit Amenities (not required for Single Room Occupancy Developments). If fees in addition to rent are charged for amenities, then the amenity may not be included among those provided to satisfy this requirement. Any future changes in these amenities, or substitution of these amenities, may result in a decrease in awarded credits if the substitution or change includes a decrease in cost or in a cancellation of a Commitment Notice or Carryover Allocation if the Threshold Criteria are no longer met.

(i) All New Construction Units must be wired with 6 pair CAT5e wiring or better to provide phone and data service to each unit and wired with COAX cable to provide TV and high speed internet data service to each unit;

(ii) Blinds or window coverings for all windows;

(iii) Dishwasher and Disposal (not required for TX-USDA-RHS Developments);

(iv) Refrigerator;

(v) Oven/Range;

(vi) Exhaust/vent fans in bathrooms; and

(vii) Ceiling fans in living areas and bedrooms.

(C) A certification that the Development will adhere to the Texas Property Code relating to security devices and other applicable requirements for residential tenancies, and will adhere to local building codes or if no local building codes are in place then to the most recent version of the International Building Code.

(D) A certification that the Applicant is in compliance with state and federal laws, including but not limited to, fair housing laws, including Chapter 301, Property Code, Title VIII of the Civil Rights Act of 1968 (§42U.S.C. §3601 et seq.), and the Fair Housing Amendments Act of 1988 (§42U.S.C. §3601 et seq.); the Civil Rights Act of 1964 (§42U.S.C. §2000a et seq.); the Americans with Disabilities Act of 1990 (§42U.S.C. §12101 et seq.); the Rehabilitation Act of 1973 (29 U.S.C. §701 et seq.); Fair Housing Accessibility; the Texas Fair Housing Act; and that the Development is designed consistent with the Fair Housing Act Design Manual produced by HUD, the Code Requirements for Housing Accessibility 2000 (or as amended from time to time) produced by the International Code Council and the Texas Accessibility Standards. (§2306.257; §2306.6705(7))

(E) A certification that the Applicant will attempt to ensure that at least 30% of the construction and management businesses with which the Applicant contracts in connection with the Development are Minority Owned Businesses, and that the Applicant will submit a report at least once in each 90-day period following the date of the Commitment Notice until the Cost Certification is submitted, in a format prescribed by the Department and provided at the time a Commitment Notice is received, on the percentage of businesses with which the Applicant has contracted that qualify as Minority Owned Businesses. (§2306.6734)

(F) Pursuant to §2306.6722, any Development supported with a housing tax credit allocation shall comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C. The Applicant must provide a certification from an accredited architect or Department-approved third party accessibility specialist, that the Development will comply with the accessibility standards that are required under §504, Rehabilitation Act of 1973 (29 U.S.C. §794), and specified under 24 C.F.R. Part 8, Subpart C and this subparagraph. (§§2306.6722 and 2306.6730)

(G) Developments involving New Construction (excluding New Construction of non-residential buildings) where some Units are two-stories and are normally exempt from Fair Housing accessibility requirements, a minimum of 20% of each Unit type (i.e. one bedroom, two bedroom, three bedroom) must provide an accessible entry level and all common-use facilities in compliance with the Fair Housing Guidelines, and include a minimum of one bedroom and one bathroom or powder room at the entry level. A similar certification will also be required after the Development is completed from an inspector, architect, or accessibility specialist. Any Developments designed as single family structures must also satisfy the requirements of §2306.514, Texas Government Code.

(H) A certification that the Development will be equipped with energy saving devices that meet the standard statewide

energy code adopted by the state energy conservation office, unless historic preservation codes permit otherwise for a Development involving historic preservation. All Units must be air-conditioned. The measures must be certified by the Development architect as being included in the design of each tax credit Unit at the time the 10% Test Documentation is submitted and in actual construction upon Cost Certification. (§2306.6725(b)(1))

(I) A certification that the Development will be built by a General Contractor that satisfies the requirements of the General Appropriation Act, Article VII, Rider 8(c) applicable to the Department which requires that the General Contractor hired by the Development Owner or the Applicant, if the Applicant serves as General Contractor, must demonstrate a history of constructing similar types of housing without the use of federal tax credits.

(J) A certification that the Development Owner agrees to establish a reserve account consistent with §2306.186 Texas Government Code and as further described in §1.37 of this title.

(K) A certification that the Applicant, Developer, or any employee or agent of the Applicant has not formed a neighborhood organization for purposes of subsection (i)(2) of this section, has not given money or a gift to cause the neighborhood organization to take its position of support or opposition, nor has provided any assistance to a neighborhood organization to meet the requirements under subsection (i)(2) of this section which are not allowed under that subsection, as it relates to the Applicant's Application or any other Application under consideration in 2007.

(L) A certification that the Development Owner will cooperate with the local public housing authority, to the extent there are any, in accepting tenants from their waiting lists (§42(m)(1)(C)(vi)).

(M) A certification that the Development Owner will contract with a Management Company through out the Compliance Period that will perform criminal background checks on all adult tenants, head and co head of households.

(5) Design Items. This exhibit will provide:

(A) All of the architectural drawings identified in clauses (i) - (iii) of this subparagraph. While full size design or construction documents are not required, the drawings must have an accurate and legible scale and show the dimensions. All Developments involving New Construction, or conversion of existing buildings not configured in the Unit pattern proposed in the Application, must provide all of the items identified in clauses (i) - (iii) of this subparagraph. For Developments involving Rehabilitation for which the Unit configurations are not being altered, only the items identified in clauses (i) and (iii) of this subparagraph are required:

(i) A site plan which:

(I) Is consistent with the number of Units and Unit mix specified in the "Rent Schedule" provided in the Application;

(II) Identifies all residential and common buildings and amenities; and

(III) Clearly delineates the flood plain boundary lines and all easements shown in the site survey;

(ii) Floor plans and elevations for each type of residential building and each common area building clearly depicting the height of each floor and a percentage estimate of the exterior composition; and

(iii) Unit floor plans for each type of Unit showing special accessibility and energy features. The net rentable areas these Unit floor plans represent should be consistent with those shown in the "Rent Schedule" provided in the application; and

(B) A boundary survey of the proposed Development site and of the property to be purchased. In cases where more property is purchased than the proposed site of the Development, the survey or plat must show the survey calls for both the larger site and the subject site. The survey does not have to be recent; but it must show the property purchased and the property proposed for Development. In cases where the site of the Development is only a part of the site being purchased, the depiction or drawing of the Development portion may be professionally compiled and drawn by an architect, engineer or surveyor.

(6) Evidence of the Development's development costs and corresponding credit request and syndication information as described in subparagraphs (A) - (G) of this paragraph.

(A) A written narrative describing the financing plan for the Development, including any non-traditional financing arrangements; the use of funds with respect to the Development; the funding sources for the Development including construction, permanent and bridge loans, rents, operating subsidies, and replacement reserves; and the commitment status of the funding sources for the Development. This information must be consistent with the information provided throughout the Application. (§2306.6705(1))

(B) All Developments must submit the "Development Cost Schedule" provided in the Application. This exhibit must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period.

(C) Provide a letter of commitment from a syndicator that, at a minimum, provides an estimate of the amount of equity dollars expected to be raised for the Development in conjunction with the amount of housing tax credits requested for allocation to the Development Owner, including pay-in schedules, syndicator consulting fees and other syndication costs. No syndication costs should be included in the Eligible Basis. (§2306.6705(2) and (3))

(D) For Developments located in a Qualified Census Tract (QCT) as determined by the Secretary of HUD and qualifying for a 30% increase in Eligible Basis, pursuant to the Code, §42(d)(5)(C), if permitted under §49.6(h) of this title, Applicants must submit a copy of the census map clearly showing that the proposed Development is located within a QCT. Census tract numbers must be clearly marked on the map, and must be identical to the QCT number stated in the Department's Reference Manual.

(E) Rehabilitation Developments must submit a Property Condition Assessment meeting the requirements of paragraph (14)(C) of this subsection.

(F) If offsite costs are included in the budget as a line item, or embedded in the site acquisition contract, or referenced in the utility provider letters, then the supplemental form "Off Site Cost Breakdown" must be provided.

(G) If projected site work costs include unusual or extraordinary items or exceed $9,000 per Unit, then the Applicant must provide a detailed cost breakdown prepared by a Third Party engineer or architect, and a letter from a certified public accountant allocating which portions of those site costs should be included in Eligible Basis and which ones may be ineligible.

(7) Evidence of readiness to proceed as evidenced by at least one of the items under each of subparagraphs (A) - (D) of this paragraph:

(A) Evidence of Property control in the name of the Development Owner. If the evidence is not in the name of the Development Owner, then the documentation should reflect an expressed ability to transfer the rights to the Development Owner. All of the sellers of the proposed Property for the 36 months prior to the first day of the Application Acceptance Period and their relationship, if any, to members of the Development team must be identified at the time of Application (not required at Pre-Application). One of the following items described in clauses (i) - (iii) of this subparagraph must be provided, and if the acquisition can be characterized as an identity of interest transaction as described in §1.32(e)(1)(B) of this title, items described in clause (iv) of this subparagraph must also be provided:

(i) A recorded warranty deed with corresponding executed settlement statement, unless required to submit items under clause (iv) of this subparagraph; or

(ii) A contract for lease (the minimum term of the lease must be at least 45 years) which is valid for the entire period the Development is under consideration for tax credits; or

(iii) A contract for sale, an exclusive option to purchase which is valid for the entire period the Development is under consideration for tax credits. For Tax Exempt Bond Developments site control must be valid through December 1, 2006 with option to extend through March 1, 2007 (Applications submitted for lottery) or 90 days from the date of the bond reservation with the option to extend through the scheduled TDHCA Board meeting. The potential expiration of site control does not warrant the Application being presented to the TDHCA Board prior to the scheduled meeting.

(iv) If the acquisition can be characterized as an identity of interest transaction as described in §1.32(e)(1)(B) of this title, subclauses (I) and (II) of this clause must be provided (not required at Pre-Application):

(I) Documentation of the original acquisition cost in the form of a settlement statement or, if a settlement statement is not available, the seller's most recent audited financial statement indicating the asset value for the proposed Property, and

(II) If the original acquisition cost evidenced by subclause (I) of this clause is less than the acquisition cost claimed in the application,

(-a-) An appraisal meeting the requirements of paragraph (14)(D) of this subsection, and

(-b-) Any other verifiable costs of owning, holding, or improving the Property that when added to the value from subclause (I) of this clause justifies the Applicant's proposed acquisition amount.

(-1-) For land-only transactions, documentation of owning, holding or improving costs since the original acquisition date may include Property taxes, interest expense, a calculated return on equity at a rate consistent with the historical returns of similar risks, the cost of any physical improvements made to the Property, the cost of rezoning, replatting or developing the Property, or any costs to provide or improve access to the Property.

(-2-) For transactions which include existing buildings that will be rehabilitated or otherwise maintained as part of the Development, documentation of owning, holding, or improving costs since the original acquisition date may include capitalized costs of improvements to the Property, a calculated return on equity at a rate consistent with the historical returns of similar risks, and allow the cost of exit taxes not to exceed an amount necessary to allow the sellers to be made whole in the original and subsequent investment in the Property and avoid foreclosure.

(v) As described in clauses (ii) and (iii) of this subparagraph, Property control must be continuous. Closing on the Property is acceptable, as long as evidence is provided that there was no period in which control was not retained.

(B) Evidence from the appropriate local municipal authority that satisfies one of clauses (i) - (iii) of this subparagraph. Documentation may be from more than one department of the municipal authority and must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period. (§2306.6705(5))

(i) A letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating that the Development is located within the boundaries of a political subdivision which does not have a zoning ordinance; the letter must also state that the Development fulfills a need for additional affordable rental housing as evidenced in a local consolidated plan, comprehensive plan, or other local planning document; or if no such planning document exists, then the letter from the local municipal authority must state that there is a need for affordable housing.

(ii) A letter from the chief executive officer of the political subdivision or another local official with appropriate jurisdiction stating that:

(I) The Development is permitted under the provisions of the zoning ordinance that applies to the location of the Development; or

(II) The Applicant is in the process of seeking the appropriate zoning and has signed and provided to the political subdivision a release agreeing to hold the political subdivision and all other parties harmless in the event that the appropriate zoning is denied, and a time schedule for completion of appropriate zoning. The Applicant must also provide at the time of Application a copy of the application for appropriate zoning filed with the local entity responsible for zoning approval and proof of delivery of that application in the form of a signed certified mail receipt, signed overnight mail receipt, or confirmation letter from said official. Final approval of appropriate zoning must be achieved and documentation of acceptable zoning for the Development, as proposed in the Application, must be provided to the Department at the time the Commitment Fee, or Determination Notice Fee, is paid. If this evidence is not provided with the Commitment Fee, any commitment of credits will be rescinded. No extensions may be requested for the deadline for submitting evidence of final approval of appropriate zoning.

(iii) In the case of a Rehabilitation Development, if the property is currently a non-conforming use as presently zoned, a letter which discusses the items in subclauses (I) - (IV) of this clause:

(I) A detailed narrative of the nature of non-conformance;

(II) The applicable destruction threshold;

(III) Owner's rights to reconstruct in the event of damage; and

(IV) Penalties for noncompliance.

(C) Evidence of interim and permanent financing sufficient to fund the proposed Total Housing Development Cost less any other funds requested from the Department and any other sources documented in the Application. Any local, state or federal financing identified in this section which restricts household incomes at any AMGI lower than restrictions required pursuant to the Rules must be identified in the Rent Schedule and the local, state or federal income restrictions must include corresponding rent levels that do not exceed 30% of the

income limitation in accordance with §42(g), Internal Revenue Code. The income and corresponding rent restrictions will be continuously maintained over the compliance and extended use period as specified in the LURA. Such evidence must be consistent with the sources and uses of funds represented in the Application and shall be provided in one or more of the following forms described in clauses (i) - (iv) of this subparagraph:

(i) Bona fide financing in place as evidenced by:

(I) A valid and binding loan agreement;

(II) Deed(s) of trust in the name of the Development Owner expressly allowing transfer to the Development Owner; and

(III) For TX-USDA-RHS 515 Developments involving Rehabilitation, an executed TX-USDA-RHS letter indicating TX-USDA-RHS has received a Consent Request, also referred to as a Preliminary Submittal, as described in 7 CFR 3560.406; or,

(ii) Bona fide commitment or term sheet for the interim and permanent loans issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money which is addressed to the Development Owner and which has been executed by the lender (the term of the loan must be for a minimum of 15 years with at least a 30 year amortization). The commitment must state an expiration date and all the terms and conditions applicable to the financing including the mechanism for determining the interest rate, if applicable, and the anticipated interest rate and any required Guarantors. Such a commitment may be conditional upon the completion of specified due diligence by the lender and upon the award of tax credits; or,

(iii) Any Federal, State or local gap financing, whether of soft or hard debt, must be identified at the time of Application as evidenced by:

(I) Evidence from the lending agency that an application for funding has been made or from the Applicant indicating an intent to apply for funding; and

(II) A term sheet which clearly describes the amount and terms of the funding, and the date by which the funding determination will be made and any commitment issued, must be submitted; and

(III) Evidence of application for funding from another Department program is not required except as indicated on the Uniform Application, as long as the Department funding is on a concurrent funding period with the Application submitted and the Applicant clearly indicates that such an Application has been filed as required by the Application Submission Procedures Manual; and

(IV) If the commitment from any funding source identified in this subparagraph has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the funding source, the Commitment Notice may be rescinded; or

(iv) If the Development will be financed through more than 5% of Development Owner contributions, provide a letter from an Third Party CPA verifying the capacity of the Development Owner to provide the proposed financing with funds that are not otherwise committed together with a letter from the Development Owner's bank or banks confirming that sufficient funds are available to the Development Owner. Documentation must have been prepared and executed not more than 6 months prior to the close of the Application Acceptance Period.

(D) Provide the documents in clauses (i) - (iii) of this subparagraph:

(i) A copy of the full legal description

(ii) A current valuation report from the county tax appraisal district and documentation of the current total property tax rate for the proposed Property, and

(iii) A copy of:

(I) The current title policy which shows that the ownership (or leasehold) of the land/Development is vested in the exact name of the Development Owner; or

(II) a current title commitment with the proposed insured matching exactly the name of the Development Owner and the title of the Property/Development vested in the exact name of the seller or lessor as indicated on the sales contract or lease.

(III) If the title policy or commitment is more than six months old as of the day the Application Acceptance Period closes, then a letter from the title company indicating that nothing further has transpired on the policy or commitment.

(8) Evidence in the form of a certification of all of the notifications described in the subparagraphs of this paragraph. Such notices must be prepared in accordance with the "Public Notifications" certification provided in the Application.

(A) Evidence in the form of a certification that the Applicant met the requirements and deadlines identified in clauses (i) - (iii) of this subparagraph. Notification must not be older than three months from the first day of the Application Acceptance Period. (§2306.6705(9)) If evidence of these notifications was submitted with the Pre-Application Threshold for the same Application and satisfied the Department's review of Pre-Application Threshold, then no additional notification is required at Application, except that re-notification is required by tax credit Applicants who have submitted a change in the Application, whether from Pre-Application to Application or as a result of a deficiency that reflects a total Unit increase of greater than 10%, a total increase of greater than 10% for any given level of AMGI, or a change to the population being served (elderly, Intergenerational Housing or family). For Applications submitted for Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only under other Multifamily Programs (HOME, Housing Trust Fund, etc.), notifications and proof thereof must not be older than three months prior to the date the Volume III of the Application is submitted.

(i) The Applicant must request Neighborhood Organizations on record with the county and state whose boundaries include the proposed Development Site from local elected officials as follows:

(I) No later than January 15, 2007 (or for Tax-Exempt Bond Applications, Rural Rescue, or Applications not applying for Tax Credits, but applying only for other Multifamily Programs such as HOME, Housing Trust Fund, etc., not later than 21 days prior to submission of the Threshold documentation), the Applicant must e-mail, fax or mail with registered receipt a completed, "Neighborhood Organization Request" letter as provided in the Application to the local elected official for the city and county where the Development is proposed to be located. If the Development is located in an Area that has district based local elected officials, or both at-large and district based local elected officials, the request must be made to the city council member or county commissioner representing that district; if the Development is located an Area that has only at-large local elected officials, the request must be made to the mayor or county judge for the jurisdiction. If the Development is not located within a city or is located in the Extra

Territorial Jurisdiction (ETJ) of a city, the county local elected official must be contacted. In the event that local elected officials refer the Applicant to another source, the Applicant must request neighborhood organizations from that source in the same format.

(II) If no reply letter is received from the local elected officials by February 25, 2007, (or For Tax-Exempt Bond Developments or Applications not applying for Tax Credits, but applying only for other Multifamily Programs such as HOME, Housing Trust Fund, etc., by 7 days prior to the submission of the Application), then the Applicant must certify to that fact in the "Application Notification Certification Form" provided in the Application.

(III) The Applicant must list all Neighborhood Organizations on record with the county or state whose boundaries include the proposed Development Site as outlined by the local elected officials, or that the Applicant has knowledge of as of the submission of the Application, in the "Application Notification Certification Form" provided in the Application.

(ii) Not later than the date the Application is submitted, notification must be sent to all of the following individuals and entities by e-mail, fax or mail with registered receipt return or similar tracking mechanism e-mail, fax or mail with registered receipt in the format required in the "Application Notification Template" provided in the Application. Developments located in an Extra Territorial Jurisdiction (ETJ) of a city are not required to notify city officials. Evidence of Notification is required in the form of a certification in the "Application Notification Certification Form" provided in the Application, although it is encouraged that Applicants retain proof of notifications in the event that the Department requires proof of Notification. Officials to be notified are those officials in office at the time the Application is submitted.

(I) Neighborhood Organizations on record with the state or county whose boundaries include the proposed Development Site as identified in clause (i)(III) of this subparagraph.

(II) Superintendent of the school district containing the Development;

(III) Presiding officer of the board of trustees of the school district containing the Development;

(IV) Mayor of the governing body of any municipality containing the Development;

(V) All elected members of the governing body of any municipality containing the Development;

(VI) Presiding officer of the governing body of the county containing the Development;

(VII) All elected members of the governing body of the county containing the Development;

(VIII) State senator of the district containing the Development; and

(IX) State representative of the district containing the Development.

(iii) Each such notice must include, at a minimum, all of the following:

(I) The Applicant's name, address, individual contact name and phone number;

(II) The Development name, address, city and county;

(III) A statement informing the entity or individual being notified that the Applicant is submitting a request for Housing Tax Credits with the Texas Department of Housing and Community Affairs;

(IV) Statement of whether the Development proposes New Construction, Reconstruction, or Rehabilitation;

(V) The type of Development being proposed (single family homes, duplex, apartments, townhomes, highrise etc.) and population being served (family, Intergenerational Housing or elderly);

(VI) The approximate total number of Units and approximate total number of low-income Units;

(VII) The approximate percentage of Units serving each level of AMGI (e.g. 20% at 50% of AMGI, etc.) and the percentage of Units that are market rate;

(VIII) The number of Units and proposed rents (less utility allowances) for the low-income Units and the number of Units and the proposed rents for any market rate Units. Rents to be provided are those that are effective at the time of the Application, which are subject to change as annual changes in the area median income occur; and

(IX) The expected completion date if credits are awarded.

(B) Signage on Property or Alternative. A Public Notification Sign shall be installed on the Development Site prior to the date the Application is submitted. Scattered site Developments must install a sign on each Development Site. For Tax-Exempt Bond Developments, regardless of the Priority of the Application or the Issuer, the sign must be installed within thirty (30) days of the Department's receipt of Volumes I and II. The date, time and location of the bond public hearing must be included on the sign no later than thirty (30) days prior to the scheduled public hearing. Evidence submitted with the Application must include photographs of the site with the installed sign. The sign must be at least 4 feet by 8 feet in size and located within twenty feet of, and facing, the main road adjacent to the site. The sign shall be continuously maintained on the site until the day that the Board takes final action on the Application for the Development. The information and lettering on the sign must meet the requirements identified in the Application. For Tax-Exempt Bond Developments, regardless of the issuer, the Applicant must certify to the fact that the sign was installed within 30 days of submission and the date, time and location of the bond hearing is indicated on the sign at least 30 days prior to the date of the scheduled hearing. As an alternative to installing a Public Notification Sign and at the same required time, the Applicant may instead, at the Applicant's option, mail written notification to those addresses described in either clause (i) or (ii) of this subparagraph. This written notification must include the information otherwise required for the sign as provided in the Application. If the Applicant chooses to provide this mailed notice in lieu of signage, the final Application must include a map of the proposed Development site and mark the distance required by clause (i) or (ii) of this subparagraph, up to 1,000 feet, showing street names and addresses; a list of all addresses the notice was mailed to; an exact copy of the notice that was mailed; and a certification that the notice was mailed through the U.S. Postal Service and stating the date of mailing. If the option in clause (i) of this subparagraph is used, then evidence must be provided affirming the local zoning notification requirements.

(i) All addresses required for notification by local zoning notification requirements. For example, if the local zoning notification requirement is notification to all those addresses within 200 feet, then that would be the distance used for this purpose; or

(ii) For Developments located in communities that do not have zoning, communities that do not require a zoning notification, or those located outside of a municipality, all addresses located within 1,000 feet of any part of the proposed Development site.

(C) If any of the Units in the Development are occupied at the time of Application, then the Applicant must certify that they have notified each tenant at the Development and let the tenants know of the Department's public hearing schedule for comment on submitted Applications.

(9) Evidence of the Development's proposed ownership structure and the Applicant's previous experience as described in subparagraphs (A) - (D) of this paragraph.

(A) Chart which clearly illustrates the complete organizational structure of the final proposed Development Owner and of any Developer or Guarantor, providing the names and ownership percentages of all Persons having an ownership interest in the Development Owner or the Developer or Guarantor, as applicable, whether directly or through one or more subsidiaries. Nonprofit entities, public housing authorities, publicly traded corporations, individual board members, and executive directors must be included in this exhibit.

(B) Each Applicant, Development Owner, Developer or Guarantor, or any entity shown on an organizational chart as described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, shall provide the following documentation, as applicable:

(i) For entities that are not yet formed but are to be formed either in or outside of the state of Texas, a certificate of reservation of the entity name from the Texas Secretary of State; or

(ii) For existing entities whether formed in or outside of the state of Texas, evidence that the entity has the authority to do business in Texas or has applied for such authority.

(C) Evidence that each entity shown on the organizational chart described in subparagraph (A) of this paragraph that has ownership interest in the Development Owner, Developer or Guarantor, has provided a copy of the completed and executed Previous Participation and Background Certification Form to the Department. Nonprofit entities, public housing authorities and publicly traded corporations are required to submit documentation for the entities involved; documentation for individual board members and executive directors is required for this exhibit. Any Person receiving more than 10% of the Developer fee will also be required to submit documents for this exhibit. The 2007 versions of these forms, as required in the Uniform Application, must be submitted. Units of local government are also required to submit this document. The form must include a list of all developments that are, or were, previously under ownership or Control of the Person. All participation in any TDHCA funded or monitored activity, including non-housing activities, must be disclosed.

(D) Evidence, in the form of a certification, that one of the Development Owner's General Partners, the Developer or their Principals have a record of successfully constructing or developing residential units in the capacity of owner, General Partner or Developer. Evidence must be a certification from the Department that the Person with the experience satisfies this exhibit, as further described under subsection (g)(1) of this section. Applicants must request this certification at least fourteen days prior to the close of the Application Acceptance Period. Applicants must ensure that the Person whose name is on the certification appears in the organizational chart provided in subparagraph (A) of this paragraph.

(10) Evidence of the Development's projected income and operating expenses as described in subparagraphs (A) - (D) of this paragraph:

(A) All Developments must provide a 30-year proforma estimate of operating expenses and supporting documentation used to generate projections (operating statements from comparable properties).

(B) If rental assistance, an operating subsidy, an annuity, or an interest rate reduction payment is proposed to exist or continue for the Development, any related contract or other agreement securing those funds or proof of Application must be provided, which at a minimum identifies the source and annual amount of the funds, the number of Units receiving the funds, and the term and expiration date of the contract or other agreement. (§2306.6705(4))

(C) Applicant must provide documentation from the source of the "Utility Allowance" estimate used in completing the Rent Schedule provided in the Application. This exhibit must clearly indicate which utility costs are included in the estimate. If there is more than one entity (Section 8 administrator, public housing authority) responsible for setting the utility allowance(s) in the area of the Development location, then the Utility Allowance selected must be the one that most closely reflects the actual utility costs in that Development area. In this case, documentation from the local utility provider supporting the selection must be provided.

(D) Occupied Developments undergoing Rehabilitation must also submit the items described in clauses (i) - (iv) of this subparagraph.

(i) The items in subclauses (I) and (II) of this clause are required unless the current property owner is unwilling to provide the required documentation. In that case, submit a signed statement as to its inability to provide all documentation as described.

(I) Submit at least one of the following:

(-a-) Historical monthly operating statements of the subject Development for 12 consecutive months ending not more than 3 months from the first day of the Application Acceptance Period;

(-b-) The two most recent consecutive annual operating statement summaries;

(-c-) The most recent consecutive six months of operating statements and the most recent available annual operating summary;

(-d-) All monthly or annual operating summaries available and a written statement from the seller refusing to supply any other summaries or expressing the inability to supply any other summaries, and any other supporting documentation used to generate projections may be provided; and

(II) A rent roll not more than 6 months old as of the first day the Application Acceptance Period, that discloses the terms and rate of the lease, rental rates offered at the date of the rent roll, Unit mix, tenant names or vacancy, and dates of first occupancy and expiration of lease.

(ii) A written explanation of the process used to notify and consult with the tenants in preparing the Application; (§2306.6705(6))

(iii) For Intergenerational Applications or Qualified Elderly Developments, identification of the number of existing tenants qualified under the target population elected under this title;

(iv) A relocation plan outlining relocation requirements and a budget with an identified funding source; and (§2306.6705(6))

(v) If applicable, evidence that the relocation plan has been submitted to the appropriate legal agency. (§2306.6705(6))

(11) Applications involving Nonprofit General Partners and Qualified Nonprofit Developments.

(A) All Applications involving a nonprofit General Partner, regardless of the Set-Aside applied under, must submit all of the documents described in clauses (i) and (ii) of this subparagraph: (§2306.6706)

(i) An IRS determination letter which states that the nonprofit organization is a 501(c)(3) or (4) entity or ; and

(ii) The "Nonprofit Participation Exhibit."

(B) Additionally, all Applications applying under the Nonprofit Set-Aside, established under §49.7(b)(1) of this title, must also provide the following information with respect to the Qualified Nonprofit Organization as described in clauses (i) - (iii) of this subparagraph.

(i) A Third Party legal opinion stating:

(I) That the nonprofit organization is not affiliated with or Controlled by a forprofit organization and the basis for that opinion, and

(II) That the nonprofit organization is eligible, as further described, for a Housing Credit Allocation from the Nonprofit SetAside and the basis for that opinion. Eligibility is contingent upon the non-profit organization Controlling the Development, or if the organization's Application is filed on behalf of a limited partnership, or limited liability company, the Qualified Nonprofit Organization must be the controlling Managing Member; and otherwise meet the requirements of the Code, §42(h)(5),

(III) That one of the exempt purposes of the nonprofit organization is to provide low-income housing, and

(IV) That the nonprofit organization prohibits a member of its board of directors, other than a chief staff member serving concurrently as a member of the board, from receiving material compensation for service on the board, and

(V) That the Qualified Nonprofit Development will have the nonprofit entity or its nonprofit affiliate or subsidiary be the Developer or co-Developer as evidenced in the development agreement; and

(ii) A copy of the nonprofit organization's most recent audited financial statement; and

(iii) Evidence in the form of a certification that a majority of the members of the nonprofit organization's board of directors principally reside:

(I) In this state, if the Development is located in a Rural Area; or

(II) Not more than 90 miles from the Development, if the Development is not located in a Rural Area.

(12) Applicants applying for acquisition credits must provide must provide

(A) An appraisal meeting the requirements of subparagraph (14)(D) of this subsection, and

(B) An "Acquisition of Existing Buildings Form."

(13) Evidence of Financial Statement and Authorization to Release Credit Information. The financial statements and authorization to release credit information must be unbound and clearly labeled. A "Financial Statement and Authorization to Release Credit Information" must be completed and signed for any General Partner, Developer or Guarantor and any Person that has an ownership interest of ten percent or more in the Development Owner, General Partner, Developer, or Guarantor. Nonprofit entities, public housing authorities and publicly traded corporations are only required to submit documentation for the entities involved; documentation for individual board members and executive directors is not required for this exhibit.

(A) Financial statements for an individual must not be older than 90 days from the first day of the Application Acceptance Period.

(B) Financial statements for partnerships or corporations should be for the most recent fiscal year ended 90 days from the first day of the Application Acceptance Period. An audited financial statement should be provided, if available, and all partnership or corporate financials must be certified. Financial statements are required for an entity even if the entity is wholly-owned by a Person who has submitted this document as an individual.

(C) Entities that have not yet been formed and entities that have been formed recently but have no assets, liabilities, or net worth are not required to submit this documentation, but must submit a statement with their Application that this is the case.

(14) Supplemental Threshold Reports. All Applications must include documents under subparagraphs (A) and (B) of this paragraph. If required under paragraph (6) of this subsection, a Property Condition Assessment as described in subparagraph (C) of this paragraph must be submitted. If required under paragraph (7) or (12) of this subsection, an appraisal as described in subparagraph (D) of this paragraph must be submitted. All submissions must meet the requirements stated in subparagraphs (E) - (G) of this paragraph.

(A) A Phase I Environmental Site Assessment (ESA) report:

(i) Prepared by a qualified Third Party;

(ii) Dated not more than 12 months prior to the first day of the Application Acceptance Period. In the event that a Phase I Environmental Site Assessment on the Development is more than 12 months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated letter or updated report dated not more than three months prior to the first day of the Application Acceptance Period from the Person or organization which prepared the initial assessment confirming that the site has been re-inspected and reaffirming the conclusions of the initial report or identifying the changes since the initial report; and

(iii) Prepared in accordance with the Department's Environmental Site Assessment Rules and Guidelines, §1.35 of this title.

(iv) Developments whose funds have been obligated by TX-USDA-RHS will not be required to supply this information; however, the Applicants of such Developments are hereby notified that it is their responsibility to ensure that the Development is maintained in compliance with all state and federal environmental hazard requirements.

(B) A comprehensive Market Analysis report:

(i) Prepared by a Third Party Qualified Market Analyst approved by the Department in accordance with the approval process outlined in the Market Analysis Rules and Guidelines, §1.33 of this title;

(ii) Dated not more than 6 months prior to the first day of the Application Acceptance Period. In the event that a Market Analysis is more than 6 months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated Market Analysis from the Person or organization which prepared the initial report; however the Department will not accept any Market Analysis which is more than 12 months old as of the first day of the Application Acceptance Period; and

(iii) Prepared in accordance with the methodology prescribed in the Department's Market Analysis Rules and Guidelines, §1.33 of this title.

(iv) For Applications in the TX-USDA-RHS Set-Aside proposing acquisition and Rehabilitation with residential structures at or above 80% occupancy at the time of Application Submission, the appraisal, required under paragraphs (7) or (12) of this subsection and prepared in accordance with the Uniform Standards of Professional Appraisal Practice and the Department's Appraisal Rules and Guidelines, §1.34 of this title, will satisfy the requirement for a Market Analysis; however the Department may request additional information as needed. (§2306.67055) (§42(m)(1)(A)(iii))

(C) A Property Condition Assessment (PCA) report:

(i) Prepared by a qualified Third Party;

(ii) Dated not more than 6 months prior to the first day of the Application Acceptance Period; and

(iii) Prepared in accordance with the Department's Property Condition and Assessment Rules and Guidelines, §1.36 of this title.

(iv) For Developments which require a capital needs assessment from TX-USDA-RHS, the capital needs assessment may be substituted and may be more than 6 months old, as long as TX-USDA-RHS has confirmed in writing that the existing capital needs assessment is still acceptable.

(D) An appraisal report:

(i) Prepared by a qualified Third Party;

(ii) Dated not more than 6 months prior to the first day of the Application Acceptance Period. In the event that an appraisal is more than 6 months old prior to the first day of the Application Acceptance Period, the Applicant must supply the Department with an updated appraisal from the Person or organization which prepared the initial report; however the Department will not accept any appraisal which is more than 12 months old as of the first day of the Application Acceptance Period; and

(iii) Prepared in accordance with the Uniform Standards of Professional Appraisal Practice and the Department's Appraisal Rules and Guidelines, §1.34 of this title.

(iv) For Developments that require an appraisal from TX-USDA-RHS, the appraisal may be more than 6 months old, as long as TX-USDA-RHS has confirmed in writing that the existing appraisal is still acceptable.

(E) Inserted at the front of each of these reports must be a transmittal letter from the individual preparing the report that states that the Department is granted full authority to rely on the findings and conclusions of the report. The transmittal letter must also state the report preparer has read and understood the Department rules specific to the report found at §§1.33 - 1.36 of this title.

(F) All Applicants acknowledge by virtue of filing an Application that the Department is not bound by any opinion expressed in the report. The Department may determine from time to time that information not required in the Department's Rules and Guidelines will be relevant to the Department's evaluation of the need for the Development and the allocation of the requested Housing Credit Allocation Amount. The Department may request additional information from the report provider or revisions to the report to meet this need. In instances of non-response by the report provider, the Department may substitute in-house analysis.

(G) The requirements for each of the reports identified in subparagraphs (A) - (C) of this paragraph can be satisfied in either of the methods identified in clause (i) or (ii) of this subparagraph and meet the requirements of clause (iii) of this subparagraph.

(i) Upon Application submission, the documentation for each of these exhibits may be submitted in its entirety; or

(ii) Upon Application submission, the Applicant may provide evidence in the form of an executed engagement letter with the party performing each of the individual reports that the required exhibit has been commissioned to be performed and that the delivery date will be no later than April 2, 2007. In addition to the submission of the engagement letter with the Application, a map must be provided that reflects the Qualified Market Analyst's intended market area. Subsequently, the entire exhibit must be submitted on or before 5:00 p.m. CST, April 2, 2007. If the entire exhibit is not received by that time, the Application will be terminated and will be removed from consideration.

(iii) A single hard copy of the report and a searchable soft copy in the format of a single file containing all information and exhibits in the hard copy report, presented in the order they appear in the hard copy report on a CD-R clearly labeled with the report type, Development name, and Development location are required.

(15) Self-Scoring. Applicant's self-score must be completed on the "Application Self-Scoring Form." An Applicant may not adjust the Application Self Scoring Form without a request from the Department as a result of an Administrative Deficiency.

(i) Selection Criteria. All Applications will be scored and ranked using the point system identified in this subsection. Unless otherwise stated, use normal rounding. Points other than paragraphs (2) and (6) of this subsection will not be awarded unless requested in the Self Scoring Form. All Applications, with the exception of TX-USDA-RHS Applications, must receive a final score totaling a minimum of 105, not including any points awarded or deducted pursuant to paragraphs (2) and (6) of this subsection to be eligible for an allocation of Housing Tax Credits. Maximum Total Points: 215.

(1) Financial Feasibility of the Development. Financial Feasibility of the Development based on the supporting financial data required in the Application that will include a Development underwriting pro forma from the permanent or construction lender. (§2306.6710(b)(1)(A)) Applications may qualify to receive 28 points for this item. No partial points will be awarded. Evidence will include the documentation required for this exhibit, as reflected in the Application submitted, in addition to the commitment letter required under subsection (h)(7)(C) of this section. The supporting financial data shall include:

(A) A fifteen year pro forma prepared by the permanent or construction lender:

(i) Specifically identifying each of the first five years and every fifth year thereafter;

(ii) Specifically identifying underlying assumptions including, but not limited to general growth factor applied to income and expense; and

(iii) Indicating that the Development maintains a minimum 1.15 debt coverage ratio throughout the initial fifteen years proposed for all third party lenders that require scheduled repayment; and

(B) A statement in the commitment letter indicating that the lender's assessment finds that the Development will be feasible for fifteen years.

(C) For Developments receiving financing from TX-USDA-RHS, the form entitled "Sources and Uses Comprehensive Evaluation for Multi-Family Housing Loans" or other form deemed acceptable by the Department shall meet the requirements of this section.

(2) Quantifiable Community Participation from Neighborhood Organizations on Record with the State or County and Whose Boundaries Contain the Proposed Development Site. Points will be awarded based on written statements of support or opposition from neighborhood organizations on record with the state or county in which the Development is to be located and whose boundaries contain the proposed Development site. (§2306.6710(b)(1)(B); §2306.6725(a)(2)). It is possible for points to be awarded or deducted based on written statements from organizations that were not identified by the process utilized for notification purposes under subsection (h)(8)(A)(ii)(I) of this section if the organization provides the information and documentation required below. It is also possible that neighborhood organizations that were initially identified as appropriate organizations for purposes of the notification requirements will subsequently be determined by the Department not to meet the requirements for scoring.

(A) Basic Submission Requirements for Scoring. Each neighborhood organization may submit one letter (and enclosures) that represents the organization's input. In order to receive a point score, the letter (and enclosures) must be received or postmarked (or similar tracking system) by the Department no later than March1, 2007, for letters relating to Applications that submitted a Pre-Application, or April 2, 2007 if a Pre-Application was not submitted. Letters should be addressed to the Texas Department of Housing and Community Affairs, "Attention: Executive Director (Neighborhood Input)." Letters received after the applicable deadline will be summarized for the Board's information and consideration, but will not affect the score for the Application. The organization's letter (and enclosures) must:

(i) State the name and location of the proposed Development on which input is provided. A letter may provide input on only one proposed Development; if an organization is eligible to provide input on additional Developments, each Development must be addressed in a separate letter;

(ii) Certify that the letter is signed by the person with the authority to sign on behalf of the neighborhood organization, and provide the street and/or mailing addresses, day and evening phone numbers, and e-mail addresses and/or facsimile numbers for the signer of the letter and for one additional contact for the organization;

(iii) Certify that the organization has boundaries, and that the boundaries in effect December 1, 2006 contain the proposed Development site.;

(iv) Certify that the organization is a "neighborhood organization." For the purposes of this section, a "neighborhood organization" is defined as an organization of persons living near one another within the organization's defined boundaries in effect December 1, 2006 that contain the proposed Development site and that has a primary purpose of working to maintain or improve the general welfare of the neighborhood. "Neighborhood organizations" include homeowners associations, property owners associations, and resident councils in which the council is commenting on the Rehabilitation or Reconstruction of the property occupied by the residents. "Neighborhood organizations" do not include broader based "community" organizations; organizations that have no members other than board members; chambers of commerce; community development corporations; churches; school related organizations; Lions, Rotary, Kiwanis, and similar organizations; Habitat for Humanity; Boys and Girls Clubs; charities; public housing authorities; or any governmental entity. Organizations whose boundaries include an entire county or larger area are not "neighborhood organizations", unless the large organization is a parent organization of smaller organizations whose purpose, and composition would otherwise meet the requirements of this definition. Organizations whose boundaries include an entire city are generally not "neighborhood organizations", unless the city organization is a parent organization of smaller organizations whose purpose, and composition would otherwise meet the requirements of this definition.

(v) Include documentation showing that the organization is on record as of December 1, 2006 with the state or county in which the Development is proposed to be located. A record from the Secretary of State showing that the organization is incorporated or from the county clerk showing that the organization is on record with the county is sufficient. For a property owners association, a record from the county showing that the organization's management certificate is on record is sufficient. The documentation must be from the state or county and be current. If an organization's status with the Secretary of State is shown as "forfeited," "dissolved," or any similar status in the documentation provided by the organization, the organization will not be considered on record with the state, unless corrected in a deficiency response. It is insufficient to be "on record" to provide only a request to the county or a state entity to be placed on record or to show that the organization has corresponded with such an entity or used its services or programs. There are two options to be considered on record with the Department (and thereby the state):

(I) The neighborhood organization may submit a letter from the city showing that the organization was on record with a city as of December 1, 2006 may be submitted with the QCP Package to place the organization on record with the state effective December 1, 2006; or

(II) The neighborhood organization may submit a letter including a contact name with a mailing address and phone number; and a written description and map of the organization's geographical boundaries, as well as proof that the boundaries described were in effect as of December 1, 2006. Under this option, a certification will not suffice. This request must be received no later than February 15, 2007. Acceptance of this documentation by the Department will be effective December 1, 2006 and will satisfy the "on record with the state" requirement, but is not a determination that the organization is a "neighborhood organization" or that other requirements are met. The Department is permitted to issue a deficiency notice for this registration process and if satisfied, the organization will still be deemed to be timely placed on record with the state.

(vi) Accurately certify that the neighborhood organization was not formed by any Applicant, Developer, or any employee or agent of any Applicant (the seller of land is not considered to be an agent of the Application)in the 2007 Tax Credit Application Round, that the organization and any member did not accept money or a gift to cause the neighborhood organization to take its position of support or opposition, and has not provided any assistance other than education and information sharing to the neighborhood organization to meet

the requirements of this subparagraph for any application in the Application Round (i.e. hosting a public meeting, providing the "TDHCA Information Packet for Neighborhoods" to the neighborhood organization, or referring the neighborhood organization to TDHCA staff for guidance). Applicants may not provide any "production" assistance to meet these requirements for any application in the Application Round (i.e. use of fax machines owned by the Applicant, use of legal counsel related to the Applicant, or assistance drafting a letter for the purposes of this subparagraph).

(vii) While not required, the organization is encouraged to hold a meeting to which all the members of the organization are invited to consider whether the organization should support, oppose, or be neutral on the proposed Development, and to have the membership vote on whether the organization should support, oppose, or be neutral on the proposed Development. The organization is also encouraged to invite the developer to this meeting.

(viii) The organization must accurately certify that the boundaries in effect December 1, 2006 include the proposed Development Site and acknowledge in the certification that annexations occurring after that time to include a Development site will not be considered eligible. A Development site must be entirely contained within the boundaries of the organization to satisfy eligibility for this item; a site that is only partially within the boundaries will not satisfy the requirement that the boundaries contain the proposed Development site.

(ix) Letters from organizations, and subsequent correspondence from organizations, may not be provided via the Applicant which includes facsimile and email communication.

(B) Scoring of Letters (and Enclosures). The input must clearly and concisely state each reason for the organization's support for or opposition to the proposed Development.

(i) The score awarded for each letter for this exhibit will range from a maximum of +24 for the position support to +12 for the neutral position to 0 for a position of opposition. The number of points to be allocated to each organization's letter will be based on the organization's letter and evidence enclosed with the letter. The final score will be determined by the Executive Director. The Department may investigate a matter and contact the Applicant and neighborhood organizations for more information. The Department may consider any relevant information specified in letters from other neighborhood organizations regarding a Development in determining a score.

(ii) The Department highly values quality public input addressed to the merits of a Development. Input that points out matters that are specific to the neighborhood, the proposed site, the proposed Development, or Developer are valued. If a proposed Development is permitted by the existing or pending zoning or absence of zoning, concerns addressed by the allowable land use that are related to any multifamily development may generally be considered to have been addressed at the local level through the land use planning process. Input concerning positive efforts or the lack of efforts by the Applicant to inform and communicate with the neighborhood about the proposed Development is highly valued. If the neighborhood organization refuses to communicate with the Applicant the efforts of the Applicant will not be considered negative. Input that evidences unlawful discrimination against classes of persons protected by Fair Housing law or the scoring of which the Department determines to be contrary to the Department's efforts to affirmatively further fair housing will not be considered.

(iii) In general, letters that meet the requirements of this paragraph and:

(I) Establish at least one reason for support or opposition will be scored the maximum points for either support (+24 points) or opposition (zero);

(II) That do not establish a reason for support or opposition or that are unclear will be considered ineligible and scored as neutral (+12 points).

(iv) Applications for which there are multiple eligible letters received, an average score will be applied to the Application.

(v) Applications for which no letters from neighborhood organizations are scored will receive a neutral score of +12 points.

(C) Basic Submission Deficiencies. The Department is authorized but not required to request that the neighborhood organization provide additional information or documentation the Department deems relevant to clarify information contained in the organization's letter (and enclosures). If the Department determines to request additional information from an organization, it will do so by e-mail or facsimile to the e-mail address or facsimile number provided with the organization's letter. If the deficiencies are not clarified or corrected in the Department's determination within seven business days from the date the e-mail or facsimile is sent to the organization, the organization's letter will not be considered further for scoring and the organization will be so advised. This potential deficiency process does not extend any deadline required above for the "Quantifiable Community Participation" process. An organization may not submit additional information or documentation after the applicable deadlines deadline except in response to an e-mail or facsimile from the Department specifically requesting additional information.

(3) The Income Levels of Tenants of the Development. Applications may qualify to receive up to 22 points for qualifying under only one of subparagraphs (A) - (F) of this paragraph. To qualify for these points, the household incomes must not be higher than permitted by the AMGI level The Development Owner, upon making selections for this exhibit, will set aside Units at the levels of AMGI and will maintain the percentage of such Units continuously over the compliance and extended use period as specified in the LURA. These income levels require corresponding rent levels that do not exceed 30% of the income limitation in accordance with §42(g), Internal Revenue Code. (§2306.6710(b)(1)(C); §2306.111(g)(3)(B); §2306.6710(e); §42(m)(1)(B)(ii)(I); §2306.111(g)(3)(E))

(A) 22 points if at least 80% of the Total Units in the Development are set-aside with incomes at or below 50% of AMGI; or

(B) 22 points if at least 10% of the Total Units in the Development are set-aside with incomes at or below 30% of AMGI; or

(C) 20 points if at least 60% of the Total Units in the Development are set-aside with incomes at or below 50% of AMGI; or

(D) 18 points if at least 40% of the Total Units in the Development are set-aside with incomes at or below a combination of 50% and 30% of AMGI in which at least 5% of the Total Units are at or below 30% of AMGI; or

(E) 16 points if at least 40% of the Total Units in the Development are set-aside with incomes at or below 50% of AMGI; or

(F) 14 points if at least 35% of the Total Units in the Development are set-aside with incomes at or below 50% of AMGI.

(4) The Size and Quality of the Units (Development Characteristics). Applications may qualify to receive up to 20 points. Applications may qualify for points under both subparagraphs (A) and (B) of this paragraph. (§2306.6710(b)(1)(D); §42(m)(1)(C)(iii))

(A) Size of the Units. Applications may qualify to receive 6 points. The Development must meet the minimum requirements identified in this subparagraph to qualify for points. Six points for this item will be automatically granted for Applications involving Rehabilitation, Developments receiving funding from TX-USDA-RHS, or Developments proposing single room occupancy without meeting these square footage minimums if requested in the Self Scoring Form. The square feet of all of the Units in the Development, for each type of Unit, must be at least the minimum noted below.

(i) 500 square feet for an efficiency Unit;

(ii) 650 square feet for a non-elderly one Bedroom Unit; 550 square feet for an elderly one Bedroom Unit;

(iii) 900 square feet for a non-elderly two Bedroom Unit; 750 square feet for an elderly two Bedroom Unit;

(iv) 1,000 square feet for a three Bedroom Unit; and

(v) 1,200 square feet for a four Bedroom Unit.

(B) Quality of the Units. Applications may qualify to receive up to 14 points. Applications in which Developments provide specific amenity and quality features in every Unit at no extra charge to the tenant will be awarded points based on the point structure provided in clauses (i) - (xx) of this subparagraph, not to exceed 14 points in total. Applications involving scattered site Developments must have all of the Units located with a specific amenity to count for points. Applications involving Rehabilitation or single room occupancy may receive 1.5 points for each point item, not to exceed 14 points in total.

(i) Covered entries (1 point);

(ii) Nine foot ceilings in living room and all bedrooms (at minimum) (1 point);

(iii) Microwave ovens (1 point);

(iv) Self-cleaning or continuous cleaning ovens (1 point);

(v) Ceiling fixtures in all rooms (light with ceiling fan in living area and all bedrooms) (1 point);

(vi) Refrigerator with icemaker (1 point);

(vii) Laundry connections (2 points);

(viii) Storage room or closet, of approximately 9 square feet or greater, which does not include bedroom, entryway or linen closets - does not need to be in the Unit but must be on the property site (1 point);

(ix) Laundry equipment (washers and dryers) for each individual unit including a front loading washer and dryer in required UFAS compliant Units (3 points);

(x) Thirty year architectural shingle roofing (1 point);

(xi) Covered patios or covered balconies (1 point);

(xii) Covered parking (including garages) of at least one covered space per Unit (2 points);

(xiii) 100% masonry on exterior, which can include stucco, cementitious board products, concrete brick and mortarless concrete masonry, but not EIFS synthetic stucco (3 points);

(xiv) Greater than 75% masonry on exterior, which can include stucco and cementitious board products, concrete brick and mortarless concrete masonry, but not EIFS synthetic stucco (1 points);

(xv) Use of energy efficient alternative construction materials (for example, Structural Insulated Panel construction) with wall insulation at a minimum of R-20 (3 points).

(xvi) R-15 Walls / R-30 Ceilings (rating of wall system) (3 points);

(xvii) 14 SEER HVAC or evaporative coolers in dry climates for New Construction or radiant barrier in the attic for Rehabilitation (3 points);(WG)

(xviii) Energy Star rated refrigerators and dishwashers (2 points); or

(xix) High Speed Internet service to all Units at no cost to residents (2 points).

(xx) Fire sprinklers in all Units (2 points).

(5) The Commitment of Development Funding by Local Political Subdivisions. Applications may qualify to receive up to 18 points for qualifying under this paragraph. (§2306.6710(b)(1)(E))

(A) Basic Submission Requirements for Scoring. Evidence of the following must be submitted in accordance with the Application Submission Procedures Manual (ASPM).

(i) Evidence must be submitted in the Application that the proposed Development has received or will receive qualifying loan(s), grants or in-kind contributions from a Local Political Subdivision, as defined in this title.

(ii) The loans, grant(s) or in-kind contribution(s) must be attributed to the Total Housing Development Costs, as defined in this title, unless otherwise stipulated in this section.

(iii) An Applicant may only submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form. For example, if an Applicant is requesting 18 points, five sources may be submitted if each is for an amount equal to 1% of the Total Housing Development Cost. However, five sources may not be submitted if each source is for an amount equal to 5% of the Total Housing Development Cost.

(iv) An Applicant may substitute any source in response to a Deficiency Notice or after the Application has been submitted to the Department.

(v) A loan does not qualify as an eligible source unless it has a minimum 1-year term and the interest rate must be at the Applicable Federal Rate (AFR) or below (at the time of application

(vi) In-kind contributions such as donation of land, tax exemptions, or waivers of fees such as building permits, water and sewer tap fees, or similar contributions are only eligible if the in-kind contribution provides a tangible economic benefit that results in a quantifiable Total Housing Development Cost reduction to benefit the Development will be acceptable to qualify for these points. The quantified value of the Total Housing Development Cost reduction may only include the value during the period the contribution or waiver is received and/or assessed Donations of land must be under the control of the Applicant, pursuant to §49.9(h)(7) of this title to qualify.

(vii) To the extent that a Notice of Funding Availability (NOFA) is released and funds are available, funds from TDHCA's HOME Investment Partnerships (HOME) Program will qualify if a resolution is submitted with the Application from the Local Political Subdivision authorizing the Applicant to act on behalf of the Local Political Subdivision in applying for HOME Funds from TDHCA for the particular application.

(viii) Development based rental subsidies may qualify under this section if evidence of the remaining value of the contract is submitted from the Local Political Subdivision. The value of the contract does not include past subsidies.

(ix) Evidence to be submitted with the Application must include a copy of the commitment of funds; a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received; or a certification of intent to apply for funding that indicates the funding entity and program to which the application will be submitted, the loan amount to be applied for and the specific proposed terms. For in-kind contributions, evidence must be submitted in the Application from Local Political Subdivision substantiating the value of the in-kind contributions.

(x) If not already provided, at the time the executed Commitment Notice is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the governing body of the Local Political Subdivision for the sufficient local funding to the Department. If the funding commitment from the Local Political Subdivision has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment Notice will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the Local Political Subdivision's funds, the Commitment Notice will be rescinded and the credits reallocated.

(xi) Funding commitments from a Local Political Subdivision will not be considered final unless the Local Political Subdivision attests to the fact that any funds committed were not first provided to the Local Political Subdivision by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Local Political Subdivision or subsidiary.

(B) Scoring. Points will be determined on a sliding scale based on the percentage of the Total Housing Development Costs of the Development, as reflected in the in the Development Cost Schedule. If a revised Development Cost Schedule is submitted to the Department in response to a deficiency notice at anytime during the review process, the Revised Development Cost Schedule will be utilized for this calculation, and Applicants will be notified of the revised score, consistent with §49.9(e) of this title. Do not round for the following calculations. The "total contribution" is the total combined value of qualifying loan(s), grants or in-kind contributions from a Local Political Subdivision pursuant to (A) of this subsection.

(i) A total contribution equal to or greater than 1% of the Total Housing Development Cost of the Development receives 6 points; or

(ii) A total contribution equal to or greater than 2.5% of the Total Housing Development Cost of the Development receives 12 points; or

(iii) A total equal to or greater than 5% of the Total Housing Development Cost of the Development receives 18 points.

(6) The Level of Community Support from State Elected Officials. The level of community support for the application, evaluated on the basis of written statements from state elected officials. (§2306.6710(b)(1)(F) and (f) and (g); §2306.6725(a)(2)) Applications may qualify to receive up to 14 points for this item. Points will be awarded based on the written statements of support or opposition from state elected officials representing constituents in areas that include the location of the Development. Letters of support must identify the specific Development and must clearly state support for or opposition to the specific Development. This documentation will be accepted with the Application or through delivery to the Department from the Applicant or official by April 2, 2007. Officials to be considered are those officials in office at the time the Application is submitted. Letters of support from state officials that do not represent constituents in areas that include the location of the Development will not qualify for points under this Exhibit. Neutral letters, or letters that do not specifically refer to the Development, will receive neither positive nor negative points. Letters from State of Texas Representative or Senator: support letters are 7 points each for a maximum of 14 points; opposition letters are -7 points each for a maximum of -14 points.

(7) The Rent Levels of the Units. Applications may qualify to receive up to 12 points for qualifying under this exhibit. (§2306.6710(b)(1)(G)) If 80% or fewer of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 7 points. If between 81% and 85% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 8 points. If between 86% and 90% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 9 points. If between 91% and 95% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 10 points. If greater than 95% of the Units in the Development (excluding any Units reserved for a manager) are restricted to having rents plus the allowance for utilities equal to or below the maximum tax credit rent, then the Development shall be awarded 12 points.

(8) The Cost of the Development by Square Foot (Development Characteristics). Applications may qualify to receive 10 points for this item. (§2306.6710(b)(1)(H); §42(m)(1)(C)(iii)) For this exhibit, costs shall be defined as construction costs, including site work, direct hard costs, contingency, contractor profit, overhead and general requirements, as represented in the Development Cost Schedule. This calculation does not include indirect construction costs. The calculation will be costs per square foot of net rentable area (NRA). For the purposes of this subparagraph only, if the proposed Development is an elevator building serving elderly or a high rise building serving any population, the NRA may include elevator served interior corridors. The calculations will be based on the cost listed in the Development Cost Schedule and NRA shown in the Rent Schedule of the Application. Developments qualify for 10 points if their costs do not exceed $85 per square foot for Qualified Elderly, transitional, and single room occupancy Developments (transitional housing for the homeless and single room occupancy units as provided in the Code, §42(i)(3)(B)(iii) and (iv)), unless located in a "First Tier County" in which case their costs do not exceed $87 per square foot; and $75 for all other Developments, unless designated as "First Tier" by the Texas Department of Insurance, in which case their costs do not exceed $77 per square foot. For 2006, the First Tier counties are Aransas, Brazoria, Calhoun, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, San Patricio, and Willacy. There are also specifically designated First Tier communities in Harris County that are east of State Highway 146, and evidence in the Application must include a map with the De-

velopment site designated clearly within the community. These communities are Pasadena, Morgan's Point, Shoreacres, Seabrook and La Porte. Intergenerational developments will receive 10 points if costs described above do not exceed the square footage limit for elderly and non-elderly units as determined by using the NRA attributable to the respective elderly and non-elderly units. The Department will determine if points will be awarded by multiplying the NRA for elderly units by the applicable square footage limit for the elderly units and adding that total to the result of the multiplication of the NRA for family units by the applicable non-elderly square footage limit. If this maximum cost amount is equal to, or greater than the total of the costs identified above for the application, points will be awarded(10 points).

(9) The Services to be Provided to Tenants of the Development. Applications may qualify to receive up to 8 points. Applications may qualify for points under both subparagraphs (A) and (B) of this paragraph. (§2306.6710(b)(1)(I); §2306.254; §2306.6725(a)(1); General Appropriation Act, Article VII, Rider 7)

(A) Applicants will receive points for coordinating their tenant services with those services provided through state workforce development and welfare programs as evidenced by execution of a Tenant Supportive Services Certification (2 points).

(B) The Applicant must certify that the Development will provide a combination of special supportive services appropriate for the proposed tenants. The provision of supportive services will be included in the LURA as selected from the list of services identified in this subparagraph. No fees may be charged to the tenants for any of the services. Services must be provided on-site or transportation to off-site services must be provided (maximum of 6 points).

(i) Applications will be awarded points for selecting services listed in clause (ii) of this subparagraph based on the following scoring range:

(I) Two points will be awarded for providing two of the services; or

(II) Four points will be awarded for providing four of the services; or

(III) Six points will be awarded for providing six of the services.

(ii) Service options include child care; transportation; basic adult education; legal assistance; counseling services; GED preparation; English as a second language classes; vocational training; home buyer education; credit counseling; financial planning assistance or courses; health screening services; health and nutritional courses; organized team sports programs or youth programs; scholastic tutoring; any other programs described under Title IV-A of the Social Security Act (§42 (§42 U.S.C. §§601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families; any services addressed by §2306.254 Texas Government Code; or any other services approved in writing by the Department.

(10) Rehabilitation or Reconstruction. Applications may qualify to receive 7 points. Applications proposing to build solely Rehabilitation (excluding New Construction of non-residential buildings), or solely Reconstruction (excluding New Construction of non-residential buildings) qualify for points.

(11) Housing Needs Characteristics. (§42(m)(1)(C)(ii)) Applications may qualify to receive up to 7 points. Each Application may receive a score if correctly requested in the self score form based on objective measures of housing need in the Area where the Development is located. This Affordable Housing Need Score for each Area will be published in a Site Demographic Characteristics table in the Reference Manual.

(12) Development Includes the Use of Existing Housing as part of a Community Revitalization Plan (Development Characteristics). Applications may qualify to receive 7 points for this item. (§42(m)(1)(C)(iii)) The Development is an Existing Residential Development and proposed any Rehabilitation or any Reconstruction that is part of a Community Revitalization Plan. Evidence of the Community Revitalization Plan and a letter from the governing body stating that the Development Site is located within the targeted development areas outlined in the Community Revitalization Plan must be submitted.

(13) Pre-Application Participation Incentive Points. (§2306.6704) Applications that submitted a Pre-Application during the Pre-Application Acceptance Period and meet the requirements of this paragraph will qualify to receive 6 points for this item. To be eligible for these points, the Application must:

(A) Be for the identical Development Site, or reduced portion of the Development Site as the proposed Development Site under control in the Pre-Application;

(B) Have met the Pre-Application Threshold Criteria;

(C) Be serving the same target population (family, Intergenerational Housing, or elderly) as in the Pre-Application;

(D) Be serving the same target Set-Asides as indicated in the Pre-Application (Set-Asides can be dropped between Pre-Application and Application, but no Set-Asides can be added); and

(E) Be awarded by the Department an Application score that is not more than 5% greater or less than the number of points awarded by the Department at Pre-Application, with the exclusion of points for support and opposition under paragraphs (2), (6), and (16) of this of this subsection. An Applicant must choose, at the time of Application either clause (i) or (ii) of this subparagraph:

(i) To request the Pre-Application points and have the Department cap the Application score at no greater than the 5% increase regardless of the total points accumulated in the scoring evaluation. This allows an Applicant to avoid penalty for increasing the point structure outside the 5% range from Pre-Application to Application; or

(ii) To request that the Pre-Application points be forfeited and that the Department evaluate the Application as requested in the self-scoring sheet.

(14) Development Location. (§2306.6725(a)(4)); §42(m)(1)(C)(i)) Applications may qualify to receive 4 points. Evidence, not more than 6 months old from the first day of the Application Acceptance Period, that the subject Property is located within one of the geographical areas described in subparagraphs (A) - (G) of this paragraph. Areas qualifying under any one of the subparagraphs (A) - (G) of this paragraph will receive 4 points. An Application may only receive points under one of the subparagraphs (A) - (G) of this paragraph.

(A) A geographical Area which is an Economically Distressed Area; a Colonia; or a Difficult Development Area (DDA) as specifically designated by the Secretary of HUD at the time of Application submission (§2306.127).

(B) A designated state or federal empowerment/enterprise zone, urban enterprise community, or urban enhanced enterprise

community. Such Developments must submit a letter and a map from a city/county official verifying that the proposed Development is located within such a designated zone. Letter should be no older than 6 months from the first day of the Application Acceptance Period. (General Appropriation Act, Article VII, Rider 6; §2306.127)

(C) The Development is located in a county that has received an award as of November 15, 2006, within the past three years, from the Texas Department of Agriculture's Rural Municipal Finance Program or Real Estate Development and Infrastructure Program. Cities which have received one of these awards are categorized as awards to the county as a whole so Developments located in a different city than the city awarded, but in the same county, will still be eligible for these points.

(D) The Development is located in a census tract which has a median family income (MFI), as published by the United States Bureau of the Census (U.S. Census), that is higher than the median family income for the county in which the census tract is located. This comparison shall be made using the most recent data available as of the date the Application Round opens the year preceding the applicable program year. Developments eligible for these points must submit evidence documenting the median income for both the census tract and the county. These Census Tracts are outlined in the 2007 Housing Tax Credit Site Demographic Characteristics Report.

(E) The proposed Development will serve families with children (at least 70% of the Units must have an eligible bedroom mix of two bedrooms or more) and is proposed to be located in an elementary school attendance zone of an elementary school that has an academic rating of "Exemplary" or "Recognized," or comparable rating if the rating system changes. The date for consideration of the attendance zone is that in existence as of the opening date of the Application Round and the academic rating is the most current rating determined by the Texas Education Agency as of that same date. (§42(m)(1)(C)(vii))

(F) The proposed Development will expand affordable housing opportunities for low-income families with children outside of poverty areas. This must be demonstrated by showing that the Development will serve families with children (at least 70% of the Units must have an eligible bedroom mix of two bedrooms or more) and that the census tract in which the Development is proposed to be located has no greater than 10% poverty population according to the most recent census data. (§42(m)(1)(C)(vii)) These Census Tracts are outlined in the 2007 Housing Tax Credit Site Demographic Characteristics Report.

(15) Exurban Developments (Development characteristics). (§2306.6725(a)(4); §42(m)(1)(C)(i)) Applications may qualify to receive 7 points if the Development is not located in a Rural Area and has a population less than 100,000 based on the most current Decennial Census.

(16) Demonstration of Community Support other than Quantifiable Community Participation: If an Applicant requests these points on the self scoring form and correctly certifies to the Department that there are no neighborhood organizations that meet the Department's definition of Neighborhood Organization pursuant to §49.9(i)(2)(A)(iv) of this title and 12 points were awarded under paragraph (2) of this subsection, then that Applicant may receive two points for each letter of support submitted from a community or civic organization that serves the community in which the site is located. Letters of support must identify the specific Development and must state support of the specific Development at the proposed location. The community or civic organization must provide some documentation of its existence in the community to include, but not be limited to, listing of services and/or members, brochures, annual reports, etc. Letters of support from organizations that are not active in the area that includes the location of the Development will not be counted. For purposes of this item, community and civic organizations do not include neighborhood organizations, governmental entities, taxing entities or educational activities. Letters of support received after March 1, 2007, will not be accepted for this item. Two points will be awarded for each letter of support submitted in the Application, not to exceed 7 points. Should an Applicant elect this option and the Application receives letters in opposition by March 1, 2007, then two points will be subtracted from the score for each letter in opposition, provided that the letter is from an organization serving the community. At no time will the Application, however, receive a score lower than zero for this item.

(17) Developments in Census Tracts with No Other Existing Developments Supported by Tax Credits: The Application may receive 7 points if the proposed Development is located in a census tract in which there are no other existing developments supported by housing tax credits. Applicant must provide evidence of the census tract in which the Development is located. (§2306.6725(b)(2)) These Census Tracts are outlined in the 2007 Housing Tax Credit Site Demographic Characteristics Report.

(18) Tenant Populations with Special Housing Needs. Applications may qualify to receive 4 points for this item. (§42(m)(1)(C)(v)) The Department will award these points to Applications in which at least 10% of the Units are set aside for Persons with Special Needs. Throughout the Compliance Period, unless otherwise permitted by the Department, the Development owner agrees to affirmatively market Units to Persons with Special needs. In addition, the Department will require a minimum 12 month period during which units must either be occupied by persons with Special Needs or held vacant. The 12 month period will begin on the date each building receives its certificate of occupancy. For buildings that do not receive a Certificate of Occupancy, the 12 month period will begin on the placed in service date as provided in the Cost Certification manual. After the 12 month period, the owner will no longer be required to hold units vacant for households with special needs, but will be required to continue to affirmatively market units to household with special needs.

(19) Length of Affordability Period. Applications may qualify to receive up to 4 points. (§2306.6725(a)(5); §2306.111(g)(3)(C); §2306.185(a)(1) and (c); §2306.6710(e)(2); §42(m)(1)(B)(ii)(II)) In accordance with the Code, each Development is required to maintain its affordability for a 15-year compliance period and, subject to certain exceptions, an additional 15-year extended use period. Development Owners that are willing to extend the affordability period for a Development beyond the 30 years required in the Code may receive points as follows:

(A) Add 5 years of affordability after the extended use period for a total affordability period of 35 years (2 points); or

(B) Add 10 years of affordability after the extended use period for a total affordability period of 40 years (4 points)

(20) Site Characteristics. Development Sites, including scattered sites, will be evaluated based on proximity to amenities, the presence of positive site features and the absence of negative site features. Sites will be rated based on the criteria below.

(A) Proximity of site to amenities. Developments Sites located within a one mile radius (two-mile radius for Developments competing for a Rural Regional Allocation) of at least three services appropriate to the target population will receive four points. A site located within one-quarter mile of public transportation that is accessible to all residents including Persons With Disabilities and/or located within a community that has "on demand" transportation, special transit service, or specialized elderly transportation for Qualified Elderly

Developments, will receive full points regardless of the proximity to amenities, as long as the Applicant provides appropriate evidence of the transportation services used to satisfy this requirement. If a Development is providing its own specialized van or on demand service, then this will be a requirement of the LURA. Only one service of each type listed below will count towards the points. A map must be included identifying the Development site and the location of the services. The services must be identified by name on the map. If the services are not identified by name, points will not be awarded. All services must exist or, if under construction, must be at least 50% complete by the date the Application is submitted. (4 points)

(i) Full service grocery store or supermarket

(ii) Pharmacy

(iii) Convenience Store/Mini-market

(iv) Department or Retail Merchandise Store

(v) Bank/Credit Union

(vi) Restaurant (including fast food)

(vii) Indoor public recreation facilities, such as civic centers, community centers, and libraries

(viii) Outdoor public recreation facilities such as parks, golf courses, and swimming pools

(ix) Hospital/medical clinic

(x) Doctor's offices (medical, dentistry, optometry)

(xi) Public Schools (only eligible for Developments that are not Qualified Elderly Developments)

(xii) Senior Center (only eligible for Qualified Elderly Developments)

(B) Negative Site Features. Development Sites with the following negative characteristics will have points deducted from their score. For purpose of this exhibit, the term 'adjacent' is interpreted as sharing a boundary with the Development site. The distances are to be measured from all boundaries of the Development site. If an Applicant negligently fails to note a negative feature, double points will be deducted from the score or the Application may be terminated. If none of these negative features exist, the Applicant must sign a certification to that effect. (-5 points)

(i) Developments located adjacent to or within 300 feet of junkyards will have 1 point deducted from their score.

(ii) Developments located adjacent to or within 300 feet of active railroad tracks will have 1 point deducted from their score, unless the applicant provides evidence that the city/community has adopted a Railroad Quiet Zone or the railroad in question is commuter or light rail. Rural Developments funded through TX-USDA-RHS are exempt from this point deduction.

(iii) Developments located adjacent to or within 300 feet of heavy industrial uses such as manufacturing plants will have 1 point deducted from their score.

(iv) Developments located adjacent to or within 300 feet of a solid waste or sanitary landfills will have 1 point deducted from their score.

(v) Developments where the buildings are located within the "fall line" of high voltage transmission power lines will have 1 point deducted from their score.

(21) Development Size. The Development consists of not more than 36 (3 points).

(22) Qualified Census Tracts with Revitalization. Applications may qualify to receive 1 point for this item. (§42(m)(1)(B)(ii)(III)) Applications will receive the points for this item if the Development is located within a Qualified Census Tract and contributes to a concerted Community Revitalization Plan. Evidence of the Community Revitalization Plan and a letter from the governing body stating that the Development Site is located within the targeted development areas outlined in the Community Revitalization Plan must be submitted.

(23) Sponsor Characteristics. Applications may qualify to receive a maximum of 2 points for this item for qualifying under either subparagraph (A) or (B) of this paragraph. (§42(m)(1)(C)(iv))

(A) An Application will receive these two points for submitting a plan to use Historically Underutilized Businesses in the development process consistent with the Historically Underutilized Business Guidelines for contracting with the State of Texas.

(B) An Application will receive these points if there is evidence that a HUB that does not meet the experience requirements under subsection (g) of this section, as certified by the Texas Building and Procurement Commission, has at least 51% ownership interest in the General Partner and materially participates in the Development and operation of the Development throughout the Compliance Period. To qualify for these points, the Applicant must submit a certification from the Texas Building and Procurement Commission that the Person is a HUB at the close of the Application Acceptance Period. The HUB will be disqualified from receiving these points if any Principal of the HUB has developed, and received 8609's for, more than two Developments involving tax credits. Additionally, to qualify for these points, the HUB must partner with an experienced developer (as defined by §49.9 of this title); the experienced developer, as an Affiliate, will not be subject to the credit limit described under §49.6(d) of this title for one application per Application Round. For purposes of this section the experienced developer may not be a Related Party to the HUB.

(24) Developments Intended for Eventual Tenant Ownership - Right of First Refusal. Applications may qualify to receive 1 point for this item. (§2306.6725(b)(1)) (§42(m)(1)(C)(viii)) Evidence that Development Owner agrees to provide a right of first refusal to purchase the Development upon or following the end of the Compliance Period for the minimum purchase price provided in, and in accordance with the requirements of, §42(i)(7) of the Code (the "Minimum Purchase Price"), to a Qualified Nonprofit Organization, the Department, or either an individual tenant with respect to a single family building, or a tenant cooperative, a resident management corporation in the Development or other association of tenants in the Development with respect to multifamily developments (together, in all such cases, including the tenants of a single family building, a "Tenant Organization"). Development Owner may qualify for these points by providing the right of first refusal in the following terms.

(A) Upon the earlier to occur of:

(i) The Development Owner's determination to sell the Development; or

(ii) The Development Owner's request to the Department, pursuant to §42(h)(6)(E)(II) of the Code, to find a buyer who will purchase the Development pursuant to a "qualified contract" within the meaning of §42(h)(6)(F) of the Code, the Development Owner shall provide a notice of intent to sell the Development ("Notice of Intent") to the Department and to such other parties as the Department may direct at that time. If the Development Owner determines that it will sell the Development at the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to expiration of the Compliance Period. If the Development Owner determines that it will

sell the Development at some point later than the end of the Compliance Period, the Notice of Intent shall be given no later than two years prior to date upon which the Development Owner intends to sell the Development.

(B) During the two years following the giving of Notice of Intent, the Sponsor may enter into an agreement to sell the Development only in accordance with a right of first refusal for sale at the Minimum Purchase Price with parties in the following order of priority:

(i) During the first six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization that is also a community housing development organization, as defined for purposes of the federal HOME Investment Partnerships Program at 24 C.F.R. §92.1 (a "CHDO") and is approved by the Department,

(ii) During the second six-month period after the Notice of Intent, only with a Qualified Nonprofit Organization or a Tenant Organization; and

(iii) During the second year after the Notice of Intent, only with the Department or with a Qualified Nonprofit Organization approved by the Department or a Tenant Organization approved by the Department.

(iv) If, during such two-year period, the Development Owner shall receive an offer to purchase the Development at the Minimum Purchase Price from one of the organizations designated in clauses (i) - (iii) of this subparagraph (within the period(s) appropriate to such organization), the Development Owner shall sell the Development at the Minimum Purchase Price to such organization. If, during such period, the Development Owner shall receive more than one offer to purchase the Development at the Minimum Purchase Price from one or more of the organizations designated in clauses (i) - (iii) of this subparagraph (within the period(s) appropriate to such organizations), the Development Owner shall sell the Development at the Minimum Purchase Price to whichever of such organizations it shall choose.

(C) After whichever occurs the later of:

(i) The end of the Compliance Period; or

(ii) Two years from delivery of a Notice of Intent, the Development Owner may sell the Development without regard to any right of first refusal established by the LURA if no offer to purchase the Development at or above the Minimum Purchase Price has been made by a Qualified Nonprofit Organization, a Tenant Organization or the Department, or a period of 120 days has expired from the date of acceptance of all such offers as shall have been received without the sale having occurred, provided that the failure(s) to close within any such 120-day period shall not have been caused by the Development Owner or matters related to the title for the Development.

(D) At any time prior to the giving of the Notice of Intent, the Development Owner may enter into an agreement with one or more specific Qualified Nonprofit Organizations and/or Tenant Organizations to provide a right of first refusal to purchase the Development for the Minimum Purchase Price, but any such agreement shall only permit purchase of the Development by such organization in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(E) The Department shall, at the request of the Development Owner, identify in the LURA a Qualified Nonprofit Organization or Tenant Organization which shall hold a limited priority in exercising a right of first refusal to purchase the Development at the Minimum Purchase Price, in accordance with and subject to the priorities set forth in subparagraph (B) of this paragraph.

(F) The Department shall have the right to enforce the Development Owner's obligation to sell the Development as herein contemplated by obtaining a power-of-attorney from the Development Owner to execute such a sale or by obtaining an order for specific performance of such obligation or by such other means or remedy as shall be, in the Department's discretion, appropriate.

(25) Leveraging of Private, State, and Federal Resources. Applications may qualify to receive 1 point for this item. (§2306.6725(a)(3)) Evidence must be submitted in the Application that the proposed Development has received or will receive loan(s), grant(s) or in-kind contributions from a private, state or federal resource, which include Capital Grant Funds and HOPE VI funds, that is equal to or greater than 2% (not using normal rounding) of the Total Housing Development Costs reflected in the Application. For in-kind contributions, evidence must be submitted in the Application from a private, state or federal resource which substantiates the value of the in-kind contributions. Development based rental subsidies from private, state or federal resource may qualify under this section if evidence of the remaining value of the contract is submitted from the source. The value of the contract does not include past subsidies. Qualifying funds awarded through local entities may qualify for points if the original source of the funds is from a private, state or federal source. Applicants may only submit enough sources to substantiate the point request, and all sources must be included in the Sources and Uses form. For example, two sources may be submitted if each is for an amount equal to 1% of the Total Housing Development Cost. However, two sources may not be submitted if each source is for an amount equal to 2% of the Total Housing Development Cost. The funding must be in addition to the primary funding (construction and permanent loans) that is proposed to be utilized and cannot be issued from the same primary funding source or an affiliated source. The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application, unless the Applicant itself is a Local Political Subdivision. The Development must have already applied for funding from the funding entity. Evidence to be submitted with the Application must include a copy of the commitment of funds or a copy of the application to the funding entity and a letter from the funding entity indicating that the application was received. At the time the executed Commitment Notice is required to be submitted, the Applicant or Development Owner must provide evidence of a commitment approved by the governing body of the entity for the sufficient financing to the Department. If the funding commitment from the private, state or federal source, or qualifying substitute source, has not been received by the date the Department's Commitment Notice is to be submitted, the Application will be evaluated to determine if the loss of these points would have resulted in the Department's not committing the tax credits. If the loss of points would have made the Application noncompetitive, the Commitment Notice will be rescinded and the credits reallocated. If the Application would still be competitive even with the loss of points and the loss would not have impacted the recommendation for an award, the Application will be reevaluated for financial feasibility. If the Application is infeasible without the commitment from the private, state or federal source, the Commitment Notice will be rescinded and the credits reallocated. Funds from the Department's HOME and Housing Trust Fund sources will only qualify under this category if there is a Notice of Funding Availability (NOFA) out for available funds and the Applicant is eligible under that NOFA. To qualify for this point, the Rent Schedule must show that at least 3% (not using

normal rounding) of all low-income Units are designated to serve individuals or families with incomes at or below 30% of AMGI.

(26) Third-Party Funding Commitment Outside of Qualified Census Tracts. Applications may qualify to receive 1 point for this item. (§2306.6710(e)(1)) Evidence that the proposed Development has documented and committed third-party funding sources and the Development is located outside of a Qualified Census Tract. The provider of the funds must attest to the fact that they are not the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application and attest that none of the funds committed were first provided to the entity by the Applicant, the Developer, Consultant, Related Party or any individual or entity acting on behalf of the proposed Application. The commitment of funds (an application alone will not suffice) must already have been received from the third-party funding source and must be equal to or greater than 2% (not using normal rounding) of the Total Development costs reflected in the Application. Funds from the Department's HOME and Housing Trust Fund sources will not qualify under this category. The third-party funding source cannot be a loan from a commercial lender.

(27) Scoring Criteria Imposing Penalties. (§2306.6710(b)(2))

(A) Penalties will be imposed on an Application if the Applicant has requested an extension of a Department deadline, and did not meet the original submission deadline, relating to Developments receiving a housing tax credit commitment made in the Application Round preceding the current round. The extension that will receive a penalty is an extension related to the submission of the Carryover Allocation Agreement or the 10% Test pursuant to §49.14 of this title. For each extension request made, the Applicant will receive a 5 point deduction for not meeting the Carryover deadline. Subsequent extension requests for carryover after the first extension request made for each Development from the preceding round will not result in a further point reduction than already described. No penalty points or fees will be deducted for extensions that were requested on Developments that involved Rehabilitation when the Department is the primary lender, or for Developments that involve TX-USDA-RHS as a lender if TX-USDA-RHS or the Department is the cause for the Applicant not meeting the deadline.

(B) Penalties will be imposed on an Application if the Developer or Principal of the Applicant has been removed by the lender, equity provider, or limited partners in the past five years for failure to perform its obligations under the loan documents or limited partnership agreement. An affidavit will be provided by the Applicant and the Developer certifying that they have not been removed as described, or requiring that they disclose each instance of removal with a detailed description of the situation. If an Applicant or Developer submits the affidavit, and the Department learns at a later date that a removal did take place as described, then the Application will be terminated and any Allocation made will be rescinded. The Applicant, Developers or Principals of the Applicant that are in court proceedings at the time of Application must disclose this information and the situation will be evaluated on a case-by-case basis. 3 points will be deducted for each instance of removal.

(C) Penalties will be imposed on an Application if Developer or Principal of the Applicant violates the Adherence to Obligations pursuant to subsection (c) of this section.

(j) Tie Breaker Factors.

(1) In the event that two or more Applications receive the same number of points in any given Set-Aside category, Rural Regional Allocation or Urban/Exurban Regional Allocation, or Uniform State Service Region, and are both practicable and economically feasible, the Department will utilize the factors in this paragraph, in the order they are presented, to determine which Development will receive a preference in consideration for a tax credit commitment.

(A) Applications involving any Rehabilitation or Reconstruction of existing Units will win this first tier tie breaker over Applications involving solely New Construction.

(B) The Application located in the municipality or, if located outside a municipality, the county that has the lowest state average of units per capita supported by Housing Tax Credits or private activity bonds at the time the Application Round begins as reflected in the Reference Manual will win this second tier tie breaker.

(C) The amount of requested tax credits per net rentable square foot requested (the lower credits per square foot has preference)

(D) Projects that are intended for eventual tenant ownership. Such Developments must utilize a detached single family site plan and building design and have a business plan describing how the project will convert to tenant ownership at the end of the 15-year compliance period.

(2) This clause identifies how ties will be handled when dealing with the restrictions on location identified in §49.5(a)(8) of this title, and in dealing with any issues relating to capture rate calculation. When two Tax-Exempt Bond Developments would violate one of these restrictions, and only one Development can be selected, the Department will utilize the reservation docket number issued by the Texas Bond Review Board in making its determination. When two competitive Housing Tax Credits Applications in the Application Round would violate one of these restrictions, and only one Development can be selected, the Department will utilize the tie breakers identified in paragraph (1) of this subsection. When a Tax-Exempt Bond Development and a competitive Housing Tax Credit Application in the Application Round would both violate a restriction, the following determination will be used:

(A) Tax-Exempt Bond Developments that receive their reservation from the Bond Review Board on or before April 30, 2007 will take precedence over the Housing Tax Credit Applications in the 2007 Application Round;

(B) Housing Tax Credit Applications approved by the Board for tax credits in July 2007 will take precedence over the Tax-Exempt Bond Developments that received their reservation from the Bond Review Board on or between May 1, 2007 and July 31, 2007; and

(C) After July 31, 2007, a Tax-Exempt Bond Development with a reservation from the Bond Review Board will take precedence over any Housing Tax Credit Application from the 2007 Application Round on the Waiting List. However, if no reservation has been issued by the date the Board approves an allocation to a Development from the Waiting List of Applications in the 2007 Application Round or a forward commitment, then the Waiting List Application or forward commitment will be eligible for its allocation.

(k) Staff Recommendations. (§2306.1112 and §2306.6731) After eligible Applications have been evaluated, ranked and underwritten in accordance with the QAP and the Rules, the Department staff shall make its recommendations to the Executive Award and Review Advisory Committee. The Committee will develop funding priorities and shall make commitment recommendations to the Board. Such recommendations and supporting documentation shall be made in advance of the meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. The Committee will provide written, documented recommendations to the Board which will address at a minimum the financial or programmatic viability of each Application

and a list of all submitted Applications which enumerates the reason(s) for the Development's proposed selection or denial, including all factors provided in subsection §49.10(a) of this section that were used in making this determination. §49.10

§49.10. Board Decisions; Waiting List; Forward Commitments

(a) Board Decisions. The Board's decisions shall be based upon the Department's and the Board's evaluation of the proposed Developments' consistency with the criteria and requirements set forth in this QAP and Rules.

(1) On awarding tax credits, the Board shall document the reasons for each Application's selection, including any discretionary factors used in making its determination, and the reasons for any decision that conflicts with the recommendations made by Department staff. The Board may not make, without good cause, a commitment decision that conflicts with the recommendations of Department staff. Good cause includes the Board's decision to apply discretionary factors. (§2306.6725(c); §42(m)(1)(A)(iv); §2306.6731)

(2) In making a determination to allocate tax credits, the Board shall be authorized to not rely solely on the number of points scored by an Application. It shall in addition, be entitled to take into account, as it deems appropriate, the discretionary factors listed in this paragraph. The Board may also apply these discretionary factors to its consideration of Tax-Exempt Bond Developments. If the Board disapproves or fails to act upon an Application, the Department shall issue to the Applicant a written notice stating the reason(s) for the Board's disapproval or failure to act. In making tax credit decisions (including those related to Tax-Exempt Bond Developments), the Board, in its discretion, may evaluate, consider and apply any one or more of the following discretionary factors: (§2306.111(g)(3); §2306.0661(f))

(A) The developer market study;

(B) The location;

(C) The compliance history of the Developer;

(D) The financial feasibility;

(E) The appropriateness of the Development's size and configuration in relation to the housing needs of the community in which the Development is located;

(F) The Development's proximity to other low-income housing developments;

(G) The availability of adequate public facilities and services;

(H) The anticipated impact on local school districts;

(I) Zoning and other land use considerations;

(J) Any matter considered by the Board to be relevant to the approval decision and in furtherance of the Department's purposes; and

(K) Other good cause as determined by the Board.

(3) Before the Board approves any Application, the Department shall assess the compliance history of the Applicant with respect to all applicable requirements; and the compliance issues associated with the proposed Development, including compliance information provided by the Texas State Affordable Housing Corporation. The Committee shall provide to the Board a written report regarding the results of the assessments. The written report will be included in the appropriate Development file for Board and Department review. The Board shall fully document and disclose any instances in which the Board approves a Development Application despite any noncompliance associated with the Development or Applicant. (§2306.057)

(b) Waiting List. (§2306.6711(c) and (d)) If the entire State Housing Credit Ceiling for the applicable calendar year has been committed or allocated in accordance with this chapter, the Board shall generate, concurrently with the issuance of commitments, a waiting list of additional Applications ranked by score in descending order of priority based on Set-Aside categories and regional allocation goals. The Board may also apply discretionary factors in determining the Waiting List. If at any time prior to the end of the Application Round, one or more Commitment Notices expire and a sufficient amount of the State Housing Credit Ceiling becomes available, the Board shall issue a Commitment Notice to Applications on the waiting list subject to the amount of returned credits, the regional allocation goals and the Set-Aside categories, including the 10% Nonprofit Set-Aside allocation required under the Code, §42(h)(5). At the end of each calendar year, all Applications which have not received a Commitment Notice shall be deemed terminated. The Applicant may re-apply to the Department during the next Application Acceptance Period.

(c) Forward Commitments. The Board may determine to issue commitments of tax credit authority with respect to Applications from the State Housing Credit Ceiling for the calendar year following the year of issuance (each a "forward commitment") to Applications submitted in accordance with the rules and timelines required under this rule and the Application Submission Procedures Manual. The Board will utilize its discretion in determining the amount of credits to be allocated as forward commitments and the reasons for those commitments considering score and discretionary factors. The Board may utilize the forward commitment authority to allocate credits to TX-USDA-RHS Developments which are experiencing foreclosure or loan acceleration at any time during the 2007 calendar year, also referred to as Rural Rescue Developments. Applications that are submitted under the 2007 QAP and granted a Forward Commitment of 2008 Housing Tax Credits are considered by the Board to comply with the 2008 QAP by having satisfied the requirements of this 2007 QAP, except for statutorily required QAP changes.

(1) Unless otherwise provided in the Commitment Notice with respect to a Development selected to receive a forward commitment, actions which are required to be performed under this chapter by a particular date within a calendar year shall be performed by such date in the calendar year of the Credit Ceiling from which the credits are allocated.

(2) Any forward commitment made pursuant to this section shall be made subject to the availability of State Housing Credit Ceiling in the calendar year with respect to which the forward commitment is made. If a forward commitment shall be made with respect to a Development placed in service in the year of such commitment, the forward commitment shall be a "binding commitment" to allocate the applicable credit dollar amount within the meaning of the Code, §42(h)(1)(C).

(3) If tax credit authority shall become available to the Department in a calendar year in which forward commitments have been awarded, the Department may allocate such tax credit authority to any eligible Development which received a forward commitment, in which event the forward commitment shall be canceled with respect to such Development.

§49.11. Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants; Viewing of Pre-Applications and Applications; Confidential Information.

(a) Required Application Notifications, Receipt of Public Comment, and Meetings with Applicants.

(1) Within approximately seven business days after the close of the Pre-Application Acceptance Period, the Department shall publish a Pre-Application Submission Log on its web site. Such log

shall contain the Development name, address, Set-Aside, number of units, requested credits, owner contact name and phone number. (§2306.6717(a)(1))

(2) Approximately 30 days before the close of the Application Acceptance Period, the Department will release the evaluation and assessment of the Pre-Applications on its web site.

(3) Not later than 14 days after the close of the Pre-Application Acceptance Period, or Application Acceptance Period for Applications for which no Pre-Application was submitted, the Department shall: (§2306.1114)

(A) Publish an Application submission log on its web site.

(B) Give notice of a proposed Development in writing that provides the information required under clause (i) of this subparagraph to all of the individuals and entities described in clauses (ii) - (x) of this subparagraph. (§2306.6718(a) - (c))

(i) The following information will be provided in these notifications:

(I) The relevant dates affecting the Application including the date on which the Application was filed, the date or dates on which any hearings on the Application will be held and the date by which a decision on the Application will be made;

(II) A summary of relevant facts associated with the Development;

(III) A summary of any public benefits provided as a result of the Development, including rent subsidies and tenant services; and

(IV) The name and contact information of the employee of the Department designated by the director to act as the information officer and liaison with the public regarding the Application.

(ii) Presiding officer of the governing body of the political subdivision containing the Development (mayor or county judge) to advise such individual that the Development, or a part thereof, will be located in his/her jurisdiction and request any comments which such individual may have concerning such Development.

(iii) If the Department receives a letter from the mayor or county judge of an affected city or county that expresses opposition to the Development, the Department will give consideration to the objections raised and will offer to visit the proposed site or Development with the mayor or county judge or their designated representative within 30 days of notification. The site visit must occur before the Housing Tax Credit can be approved by the Board. The Department will obtain reimbursement from the Applicant for the necessary travel and expenses at rates consistent with the state authorized rate (General Appropriation Act, Article VII, Rider 5) (§42(m)(1));

(iv) Any member of the governing body of a political subdivision who represents the Area containing the Development. If the governing body has single-member districts, then only that member of the governing body for that district will be notified, however if the governing body has at-large districts, then all members of the governing body will be notified;

(v) State representative and state senator who represent the community where the Development is proposed to be located. If the state representative or senator host a community meeting, the Department, if timely notified, will ensure staff are in attendance to provide information regarding the Housing Tax Credit Program; (General Appropriation Act, Article VII, Rider 8(d))

(vi) United States representative who represents the community containing the Development;

(vii) Superintendent of the school district containing the Development;

(viii) Presiding officer of the board of trustees of the school district containing the Development;

(ix) Any Neighborhood Organizations on record with the city or county in which the Development is to be located and whose boundaries contain the proposed Development site or otherwise known to the Applicant or Department and on record with the state or county; and

(x) Advocacy organizations, social service agencies, civil rights organizations, tenant organizations, or others who may have an interest in securing the development of affordable housing that are registered on the Department's email list service.

(C) The elected officials identified in subparagraph (B) of this paragraph will be provided an opportunity to comment on the Application during the Application evaluation process. (§42(m)(1))

(4) The Department shall hold at least three public hearings in different Uniform State Service Regions of the state to receive comment on the submitted Applications and on other issues relating to the Housing Tax Credit Program for competitive Applications under the State Housing Credit Ceiling. (§2306.6717(c))

(5) The Department shall make available on the Department's website information regarding the Housing Tax Credit Program including notice of public hearings, meetings, Application Round opening and closing dates, submitted Applications, and Applications approved for underwriting and recommended to the Board, and shall provide that information to locally affected community groups, local and state elected officials, local housing departments, any appropriate newspapers of general or limited circulation that serve the community in which a proposed Development is to be located, nonprofit and for-profit organizations, on-site property managers of occupied Developments that are the subject of Applications for posting in prominent locations at those Developments, and any other interested persons including community groups, who request the information. (§2306.6717(b))

(6) Approximately forty days prior to the date of the July Board meeting at which the issuance of Commitment Notices shall be discussed, the Department will notify each Applicant of the receipt of any opposition received by the Department relating to his or her Development at that time.

(7) Not later than the third working day after the date of completion of each stage of the Application process, including the results of the Application scoring and underwriting phases and the commitment phase, the results will be posted to the Department's web site. (§2306.6717(a)(3))

(8) At least thirty days prior to the date of the July Board meeting at which the issuance of Commitment Notices shall be discussed, the Department will:

(A) Provide the Application scores to the Board; (§2306.6711(a))

(B) If feasible, post to the Department's web site the entire Application, including all supporting documents and exhibits, the Application Log as further described in §49.19(b) of this title, a scoring sheet providing details of the Application score, and any other documents relating to the processing of the Application. (§2306.6717(a)(1) and (2))

(9) A summary of comments received by the Department on specific Applications shall be part of the documents required to be reviewed by the Board under this subsection if it is received 30 business days prior to the date of the Board Meeting at which the issuance of Commitment Notices or Determination Notices shall be discussed. Comments received after this deadline will not be part of the documentation submitted to the Board. However, a public comment period will be available prior to the Board's decision, at the Board meeting where tax credit commitment decisions will be made.

(10) Not later than the 120th day after the date of the initial issuance of Commitment Notices for housing tax credits, the Department shall provide an Applicant who did not receive a commitment for housing tax credits with an opportunity to meet and discuss with the Department the Application's deficiencies, scoring and underwriting. (§2306.6711(e))

(b) Viewing of Pre-Applications and Applications. Pre-Applications and Applications for tax credits are public information and are available upon request after the Pre-Application and Application Acceptance Periods close, respectively. All Pre-Applications and Applications, including all exhibits and other supporting materials, except Personal Financial Statements and Social Security numbers, will be made available for public disclosure after the Pre-Application and Application periods close, respectively. The content of Personal Financial Statements may still be made available for public disclosure upon request if the Attorney General's office deems it is not protected from disclosure by the Texas Public Information Act.

(c) Confidential Information. The Department may treat the financial statements of any Applicant as confidential and may elect not to disclose those statements to the public. A request for such information shall be processed in accordance with §552.305 of the Government Code. (§2306.6717(d))

§49.12. Tax-Exempt Bond Developments: Filing of Applications; Applicability of Rules; Supportive Services; Financial Feasibility Evaluation; Satisfaction of Requirements.

(a) Filing of Applications for Tax-Exempt Bond Developments. Applications for a Tax-Exempt Bond Development may be submitted to the Department as described in paragraphs (1) and (2) of this subsection:

(1) Applicants which receive advance notice of a Program Year 2007 reservation as a result of the Texas Bond Review Board's (TBRB) lottery for the private activity volume cap must file a complete Application not later than 12:00 p.m. on December 28, 2006. Such filing must be accompanied by the Application fee described in §49.20 of this title.

(2) Applicants which receive advance notice of a Program Year 2007 reservation after being placed on the waiting list as a result of the TBRB lottery for private activity volume cap must submit Volume 1 and Volume 2 of the Application and the Application fee described in §49.20 of this title prior to the Applicant's bond reservation date as assigned by the TBRB. Those applications designated as Priority 3 by the TBRB must submit Volumes I and II within 14 days of the bond reservation date if the Applicant intends to apply for tax credits regardless of the Issuer. Any outstanding documentation required under this section regardless of Priority must be submitted to the Department at least 60 days prior to the Board meeting at which the decision to issue a Determination Notice would be made unless a waiver is being requested.

(b) Applicability of Rules for Tax-Exempt Bond Developments. Tax-Exempt Bond Development Applications are subject to all rules in this title, with the only exceptions being the following sections: §49.4 of this title (regarding State Housing Credit Ceiling), §49.7 of this title (regarding Regional Allocation and Set-Asides), §49.8 of this title (regarding Pre-Application), §49.9(d) and (f) of this title (regarding Evaluation Processes for Competitive Applications and Rural Rescue Applications), §49.9(i) of this title (regarding Selection Criteria), §49.10(b) and (c) of this title (regarding Waiting List and Forward Commitments), and §49.14(a) and (b) of this title (regarding Carryover and 10% Test). Such Developments requesting a Determination Notice in the current calendar year must meet all Threshold Criteria requirements stipulated in §49.9(h) of this title. Such Developments which received a Determination Notice in a prior calendar year must meet all Threshold Criteria requirements stipulated in the QAP and Rules in effect for the calendar year in which the Determination Notice was issued; provided, however, that such Developments shall comply with all procedural requirements for obtaining Department action in the current QAP and Rules; and such other requirements of the QAP and Rules as the Department determines applicable. Consistency with the local municipality's consolidated plan or similar planning document must be demonstrated in those instances where the city or county has a consolidated plan. If no such planning document exists then the Applicant must submit a letter from the local municipal authority stating such and that there is a need for affordable housing. This documentation must be submitted no later than 14 days before the Board meeting where the credits will be considered. Applicants will be required to meet all conditions of the Determination Notice by the time the construction loan is closed unless otherwise specified in the Determination Notice. Applicants must meet the requirements identified in §49.15 of this title. No later than 60 days following closing of the bonds, the Development Owner must also submit a Management Plan and an Affirmative Marketing Plan (as further described in the Carryover Allocation Procedures Manual), and evidence must be provided at this time of attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five hours and the Development architect at Department-approved Fair Housing training relating to design issues for at least five hours. Certifications must not be older than two years. Applications that receive a reservation from the Bond Review Board on or before December 31, 2006 will be required to satisfy the requirements of the 2006 QAP; Applications that receive a reservation from the Bond Review Board on or after January 1, 2007 will be required to satisfy the requirements of the 2007 QAP.

(c) Supportive Services for Tax-Exempt Bond Developments. (§2306.254) Tax-Exempt Bond Development Applications must provide an executed agreement with a qualified service provider for the provision of special supportive services that would otherwise not be available for the tenants. The provision of these services will be included in the LURA. Acceptable services as described in paragraphs (1) - (3) of this subsection include:

(1) The services must be in at least one of the following categories: child care, transportation, basic adult education, legal assistance, counseling services, GED preparation, English as a second language classes, vocational training, home buyer education, credit counseling, financial planning assistance or courses, health screening services, health and nutritional courses, organized team sports programs, youth programs, scholastic tutoring, social events and activities, community gardens or computer facilities;

(2) Any other program described under Title IV-A of the Social Security Act (§42U.S.C. §§601 et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of out-of wedlock pregnancies; and encourages the formation and maintenance of two-parent families, or

(3) Any other services approved in writing by the Issuer. The plan for tenant supportive services submitted for review and approval of the Issuer must contain a plan for coordination of services with state workforce development and welfare programs. The coordinated effort will vary depending upon the needs of the tenant profile at any given time as outlined in the plan.

(d) Financial Feasibility Evaluation for Tax-Exempt Bond Developments. Code §42(m)(2)(D) requires the bond issuer (if other than the Department) to ensure that a Tax-Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. Treasury Regulations prescribe the occasions upon which this determination must be made. In light of the requirement, issuers may either elect to underwrite the Development for this purpose in accordance with the QAP and the Underwriting Rules and Guidelines, §1.32 of this title or request that the Department perform the function. If the issuer underwrites the Development, the Department will, nonetheless, review the underwriting report and may make such changes in the amount of credits which the Development may be allowed as are appropriate under the Department's guidelines. The Determination Notice issued by the Department and any subsequent IRS Form(s) 8609 will reflect the amount of tax credits for which the Development is determined to be eligible in accordance with this subsection, and the amount of tax credits reflected in the IRS Form 8609 may be greater or less than the amount set forth in the Determination Notice, based upon the Department's and the bond issuer's determination as of each building's placement in service. Any increase of tax credits, from the amount specified in the Determination Notice, at the time of each building's placement in service will only be permitted if it is determined by the Department, as required by Code §42(m)(2)(D), that the Tax-Exempt Bond Development does not receive more tax credits than the amount needed for the financial feasibility and viability of a Development throughout the Compliance Period. Increases to the amount of tax credits that exceed 110% of the amount of credits reflected in the Determination Notice are contingent upon approval by the Board. Increases to the amount of tax credits that do not exceed 110% of the amount of credits reflected in the Determination Notice may be approved administratively by the Executive Director.

(e) Satisfaction of Requirements for Tax-Exempt Bond Developments. If the Department staff determines that all requirements of this QAP and Rules have been met, the Department will recommend that the Board authorize the issuance of a Determination Notice. The Board, however, may utilize the discretionary factors identified in §49.10(a) of this title in determining if they will authorize the Department to issue a Determination Notice to the Development Owner. The Determination Notice, if authorized by the Board, will confirm that the Development satisfies the requirements of the QAP and Rules in accordance with the Code, §42(m)(1)(D).

(f) Certification of Tax Exempt Applications with New Docket Numbers Applications that are processed through the Department review and evaluation process and receive an affirmative Board Determination, but do not close the bonds prior to the bond reservation expiration date, and subsequently have that docket number withdrawn from the Bond Review Board, may have their Determination Notice reinstated. The Applicant would need to receive a new docket number from the Texas Bond Review Board. One of the following must apply:

(1) The new docket number must be issued in the same program year as the original docket number and must not be more than four months from the date the original application was withdrawn from the BRB. The application must remain unchanged. This means that at a minimum, the following can not have changed: site control, total number of units, unit mix (bedroom sizes and income restrictions), design/site plan documents, financial structure including bond and housing tax credit amounts, development costs, rent schedule, operating expenses, sources and uses, ad valorem tax exemption status, target population, scoring criteria (TDHCA issues) or BRB priority status including the effect on the inclusive capture rate. Note that the entities involved in the applicant entity and developer can not change; however, the certification can be submitted even if the lender, syndicator or issuer changes, as long as the financing structure and terms remain unchanged. Notifications under §49.9(h)(8) of this title are not required to be reissued. In the event that the Department's Board has already approved the application for tax credits, the application is not required to be presented to the Board again (unless there is public opposition) and a revised Determination Notice will be issued once notice of the assignment of a new docket number has been provided to the Department and the Department has confirmed that the capture rate and market demand remain acceptable. This certification must be submitted no later than thirty days after the date the Bond Review Board issues the new docket number and no later than thirty days before the anticipated closing. In the event that the Department's Board has not yet approved the application, the application will continue to be processed and ultimately provided to the Board for consideration. This certification must be submitted no later than thirty days after the date the Bond Review Board issues the new docket number and no later than forty-five days before the anticipated Department's Board meeting date.

(2) If there are changing to the Application as referenced in paragraph (1) of this subsection, the Application will be required to submit a new Application in full, along with the applicable fees, to be reviewed and evaluated in its entirety for a new determination notice to be issued.

§49.13. Commitment and Determination Notices; Agreement and Election Statement; Documentation Submission Requirements.

(a) Commitment and Determination Notices. If the Board approves an Application the Department will:

(1) If the Application is for a commitment from the State Housing Credit Ceiling, issue a Commitment Notice to the Development Owner which shall:

(A) Confirm that the Board has approved the Application; and

(B) State the Department's commitment to make a Housing Credit Allocation to the Development Owner in a specified amount, subject to the feasibility determination described in §49.16 of this title, and compliance by the Development Owner with the remaining requirements of this chapter and any other terms and conditions set forth therein by the Department. This commitment shall expire on the date specified therein unless the Development Owner indicates acceptance of the commitment by executing the Commitment Notice or Determination Notice, pays the required fee specified in §49.20 of this title, and satisfies any other conditions set forth therein by the Department. A Development Owner may request an extension of the Commitment Notice expiration date by submitting an extension request and associated extension fee as described in §49.20 of this title. In no event shall the expiration date of a Commitment Notice be extended beyond the last business day of the applicable calendar year.

(2) If the Application regards a Tax-Exempt Bond Development, issue a Determination Notice to the Development Owner which shall:

(A) Confirm the Board's determination that the Development satisfies the requirements of this QAP; and

(B) State the Department's commitment to issue IRS Form(s) 8609 to the Development Owner in a specified amount, sub-

ject to the requirements set forth in §49.12 of this title and compliance by the Development Owner with all applicable requirements of this title and any other terms and conditions set forth therein by the Department. The Determination Notice shall expire on the date specified therein unless the Development Owner indicates acceptance by executing the Determination Notice and paying the required fee specified in §49.20 of this title. The Determination Notice shall also expire unless the Development Owner satisfies any conditions set forth therein by the Department within the applicable time period.

(3) Notify, in writing, the mayor or other equivalent chief executive officer of the municipality in which the Property is located informing him/her of the Board's issuance of a Commitment Notice or Determination Notice, as applicable.

(4) A Commitment or Determination Notice shall not be issued with respect to any Development for an unnecessary amount or where the cost for the total development, acquisition, construction or Rehabilitation exceeds the limitations established from time to time by the Department and the Board, unless the Department staff make a recommendation to the Board based on the need to fulfill the goals of the Housing Tax Credit Program as expressed in this QAP and Rules, and the Board accepts the recommendation. The Department's recommendation to the Board shall be clearly documented.

(5) A Commitment or Determination Notice shall not be issued with respect to the Applicant, the Development Owner, the General Contractor, or any Affiliate of the General Contractor that is active in the ownership or Control of one or more other low-income rental housing properties in the state of Texas administered by the Department, or outside the state of Texas, that is in Material Noncompliance with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for such property, as described in §60 of this title.

(6) The executed Commitment or Determination Notice must be returned to the Department on the date specified with the Commitment Notice or Determination Notice, which shall be no earlier than ten days of the effective date of the Notice.

(b) Agreement and Election Statement. Together with the Development Owner's acceptance of the Carryover Allocation, the Development Owner may execute an Agreement and Election Statement, in the form prescribed by the Department, for the purpose of fixing the Applicable Percentage for the Development as that for the month in which the Carryover Allocation was accepted (or the month the bonds were issued for Tax-Exempt Bond Developments), as provided in the Code, §42(b)(2). Current Treasury Regulations, §1.42-8(a)(1)(v), suggest that in order to permit a Development Owner to make an effective election to fix the Applicable Percentage for a Development, the Carryover Allocation Document must be executed by the Department and the Development Owner within the same month. The Department staff will cooperate with a Development Owner, as possible or reasonable, to assure that the Carryover Allocation Document can be so executed.

(c) Documentation Submission Requirements at Commitment of Funds. No later than the date the Commitment Notice or Determination Notice is executed by the Applicant and returned to the Department with the appropriate Commitment Fee as further described in §49.20(f) of this title, the following documents must also be provided to the Department. Failure to provide these documents may cause the Commitment to be rescinded. For each Applicant all of the following must be provided:

(1) Evidence that the entity has the authority to do business in Texas;

(2) A Certificate of Account Status from the Texas Comptroller of Public Accounts or, if such a Certificate is not available because the entity is newly formed, a statement to such effect; and a Certificate of Organization from the Secretary of State;

(3) Copies of the entity's governing documents, including, but not limited to, its Articles of Incorporation, Articles of Organization, Certificate of Limited Partnership, Bylaws, Regulations and/or Partnership Agreement; and

(4) Evidence that the signer(s) of the Application have the authority to sign on behalf of the Applicant in the form of a corporate resolution or by-laws which indicate same from the sub-entity in Control and that those Persons signing the Application constitute all Persons required to sign or submit such documents.

§49.14. Carryover; 10% Test; Commencement of Substantial Construction.

(a) Carryover. All Developments which received a Commitment Notice, and will not be placed in service and receive IRS Form 8609 in the year the Commitment Notice was issued, must submit the Carryover documentation to the Department no later than November 1 of the year in which the Commitment Notice is issued pursuant to §42(h)(I)(c) IRC. Commitments for credits will be terminated if the Carryover documentation, or an approved extension, has not been received by this deadline. In the event that a Development Owner intends to submit the Carryover documentation in any month preceding November of the year in which the Commitment Notice is issued, in order to fix the Applicable Percentage for the Development in that month, it must be submitted no later than the first Friday in the preceding month. If the financing structure, syndication rate, amount of debt or syndication proceeds are revised at the time of Carryover from what was proposed in the original Application, applicable documentation of such changes must be provided and the Development may be reevaluated by the Department. The Carryover Allocation format must be properly completed and delivered to the Department as prescribed by the Carryover Allocation Procedures Manual. All Carryover Allocations will be contingent upon the following, in addition to all other conditions placed upon the Application in the Commitment Notice:

(1) The Development Owner for all New Construction Developments must have purchased the property for the Development.

(2) A current original plat or survey of the land, prepared by a duly licensed Texas Registered Professional Land Surveyor. Such survey shall conform to standards prescribed in the Manual of Practice for Land Surveying in Texas as promulgated and amended from time to time by the Texas Surveyors Association as more fully described in the Carryover Procedures Manual.

(3) For all Developments involving New Construction, evidence of the availability of all necessary utilities/services to the Development site must be provided. Necessary utilities include natural gas (if applicable), electric, trash, water, and sewer. Such evidence must be a letter or a monthly utility bill from the appropriate municipal/local service provider. If utilities are not already accessible, then the letter must clearly state: an estimated time frame for provision of the utilities, an estimate of the infrastructure cost, and an estimate of any portion of that cost that will be borne by the Development Owner. Letters must be from an authorized individual representing the organization which actually provides the services. Such documentation should clearly indicate the Development property. If utilities are not already accessible (undeveloped areas), then the letter should not be older than three months from the first day of the Application Acceptance Period.

(4) The Department will not execute a Carryover Allocation Agreement with any Owner in Material Noncompliance on October 1, 2007.

(b) 10% Test. No later than six months from the date the Carryover Allocation Document is executed by the Department and the Development Owner, more than 10% of the Development Owner's reasonably expected basis must have been incurred pursuant to §42(h)(1)(E)(i) and (ii) of the Internal Revenue Code and Treasury Regulations, §1.42-6. The evidence to support the satisfaction of this requirement must be submitted to the Department no later than June 30 of the year following the execution of the Carryover Allocation Document in a format prescribed by the Department. At the time of submission of the documentation, the Development Owner must also submit a Management Plan and an Affirmative Marketing Plan as further described in the Carryover Allocation Procedures Manual. Evidence must be provided at this time of attendance of the Development Owner or management company at Department-approved Fair Housing training relating to leasing and management issues for at least five hours and the Development architect at Department-approved Fair Housing training relating to design issues for at least five hours on or before the time the 10% Test Documentation is submitted. Certifications must not be older than two years.

(c) Commencement of Substantial Construction. The Development Owner must submit evidence of having commenced and continued substantial construction activities. The evidence must be submitted not later than December 1 of the year after the execution of the Carryover Allocation Document with the possibility of an extension as described in §49.20 of this title.

§49.15. LURA, Cost Certification.

(a) Land Use Restriction Agreement (LURA). The Development Owner must request a LURA from the Department no later than the date specified in §60 of this title, the Department's Compliance Monitoring Policies and Procedures. The Development Owner must date, sign and acknowledge before a notary public the LURA and send the original to the Department for execution. The initial compliance and monitoring fee must be accompanied by a statement, signed by the Owner, indicating the start of the Development's Credit Period and the earliest placed in service date for the Development buildings. After receipt of the signed LURA from the Department, the Development Owner shall then record the LURA, along with any and all exhibits attached thereto, in the real property records of the county where the Development is located and return the original document, duly certified as to recordation by the appropriate county official, to the Department no later than the date that the Cost Certification Documentation is submitted to the Department. If any liens (other than mechanics' or materialmen's liens) shall have been recorded against the Development and/or the Property prior to the recording of the LURA, the Development Owner shall obtain the subordination of the rights of any such lienholder, or other effective consent, to the survival of certain obligations contained in the LURA, which are required by §42(h)(6)(E)(ii) of the Code to remain in effect following the foreclosure of any such lien. Receipt of such certified recorded original LURA by the Department is required prior to issuance of IRS Form 8609. A representative of the Department, or assigns, shall physically inspect the Development for compliance with the Application and the representations, warranties, covenants, agreements and undertakings contained therein. Such inspection will be conducted before the IRS Form 8609 is issued for a building, but it shall be conducted in no event later than the end of the second calendar year following the year the last building in the Development is placed in service. The Development Owner for Tax-Exempt Bond Developments shall obtain a subordination agreement wherein the lien of the mortgage is subordinated to the LURA. The LURA shall not contain any provision which requires the Development Owner to restrict rents and incomes at any AMGI level, other than the AMGI levels reflected in the final Application (at the time of Board approval) or amendments to the Application made pursuant to §49.17(d) of this title, regardless of the underwriting methodology utilized in determining feasibility. The restricted gross rents for any AMGI level outlined in the LURA will be calculated in accordance with §42(g)(2)(A), Internal Revenue Code.

(b) Cost Certification. The Cost Certification Procedures Manual sets forth the documentation required for the Department to perform a feasibility analysis in accordance with §42(m)(2)(C)(i)(II), Internal Revenue Code, and determine the final Credit to be allocated to the Development.

(1) To request IRS Forms 8609, Developments must have:

(A) Placed in Service by December 31 of the year the Commitment Notice was issued if a Carryover Allocation was not requested and received; or December 31 of the second year following the year the Carryover Allocation Agreement was executed;

(B) Scheduled a final construction inspection in accordance with §60 of this title, the Department's Compliance Monitoring Policies and Procedures;

(C) Informed the Department of and received written approval for all Development amendments in accordance with §49.17(c) of this title;

(D) Submitted to the Department the LURA in accordance with §49.15(a) of this title;

(E) Paid all applicable Department fees; and

(F) Prepared all Cost Certification documentation in the format prescribed by the Cost Certification Procedures Manual.

(2) Required Cost Certification documentation must be received by the Department no later than January 15 following the year the Credit Period begins. Any Developments issued a Commitment Notice or Determination Notice that fails to submit its Cost Certification documentation by this deadline will be reported to the IRS and the Owner will be required to submit a request for extension consistent with §49.20(l) of this title.

(3) The Department will perform an initial evaluation of the Cost Certification documentation within 45 days from the date of receipt and notify the Owner in a deficiency letter of all additional required documentation. Any deficiency letters issued to the Owner pertaining to the Cost Certification documentation will also be copied to the syndicator. The Department will issue IRS Forms 8609 no later than 90 days from the date that all required documents have been received.

(4) The Department will perform an evaluation of the Applicant, the Development Owner, the General Contractor, or any Affiliate of the General Contractor that is active in the ownership or Control of the Development to determine if any entity is in Material Noncompliance with the LURA (or any other document containing an Extended Low-income Housing Commitment) or the program rules in effect for such property, as described in §60 of the Department's Compliance Monitoring Policies and Procedures prior to issuance of IRS Forms 8609.

§49.16. Housing Credit Allocations.

(a) In making a commitment of a Housing Credit Allocation under this chapter, the Department shall rely upon information contained in the Application to determine whether a building is eligible for the credit under the Code, §42. The Development Owner shall bear full responsibility for claiming the credit and assuring that the Development complies with the requirements of the Code, §42. The Department shall have no responsibility for ensuring that a Development

Owner who receives a Housing Credit Allocation from the Department will qualify for the housing credit.

(b) The Housing Credit Allocation Amount shall not exceed the dollar amount the Department determines is necessary for the financial feasibility and the long term viability of the Development throughout the affordability period. (§2306.6711(b)) Such determination shall be made by the Department at the time of issuance of the Commitment Notice or Determination Notice; at the time the Department makes a Housing Credit Allocation; and as of the date each building in a Development is placed in service. Any Housing Credit Allocation Amount specified in a Commitment Notice, Determination Notice or Carryover Allocation Document is subject to change by the Department based upon such determination. Such a determination shall be made by the Department based on its evaluation and procedures, considering the items specified in the Code, §42(m)(2)(B), and the department in no way or manner represents or warrants to any Applicant, sponsor, investor, lender or other entity that the Development is, in fact, feasible or viable.

(c) The General Contractor hired by the Development Owner must meet specific criteria as defined by the General Appropriation Act, Article VII, Rider 8(c). A General Contractor hired by a Development Owner or a Development Owner, if the Development Owner serves as General Contractor must demonstrate a history of constructing similar types of housing without the use of federal tax credits. Evidence must be submitted to the Department, in accordance with §49.9(h)(4)(H) of this title, which sufficiently documents that the General Contractor has constructed some housing without the use of Housing Tax Credits. This documentation will be required as a condition of the commitment notice or carryover agreement, and must be complied with prior to commencement of construction and at cost certification and final allocation of credits.

(d) An allocation will be made in the name of the Development Owner identified in the related Commitment Notice or Determination Notice. If an allocation is made to a member or Affiliate of the ownership entity proposed at the time of Application, the Department will transfer the allocation to the ownership entity as consistent with the intention of the Board when the Development was selected for an award of tax credits. Any other transfer of an allocation will be subject to review and approval by the Department consistent with §49.17(c) of this title. The approval of any such transfer does not constitute a representation to the effect that such transfer is permissible under §42 of the Code or without adverse consequences thereunder, and the Department may condition its approval upon receipt and approval of complete current documentation regarding the owner including documentation to show consistency with all the criteria for scoring, evaluation and underwriting, among others, which were applicable to the original Applicant.

(e) The Department shall make a Housing Credit Allocation, either in the form of IRS Form 8609, with respect to current year allocations for buildings placed in service, or in the Carryover Allocation Document, for buildings not yet placed in service, to any Development Owner who holds a Commitment Notice which has not expired, and for which all fees as specified in §49.20 of this title have been received by the Department and with respect to which all applicable requirements, terms and conditions have been met. For Tax-Exempt Bond Developments, the Housing Credit Allocation shall be made in the form of a Determination Notice. For an IRS Form 8609 to be issued with respect to a building in a Development with a Housing Credit Allocation, satisfactory evidence must be received by the Department that such building is completed and has been placed in service in accordance with the provisions of the Department's Cost Certification Procedures Manual. The Cost Certification documentation requirements will include a certification and inspection report prepared by a Third-Party accredited accessibility inspector to certify that the Development meets all required accessibility standards. IRS Form 8609 will not be issued until the certifications are received by the Department. The Department shall mail or deliver IRS Form 8609 (or any successor form adopted by the Internal Revenue Service) to the Development Owner, with Part I thereof completed in all respects and signed by an authorized official of the Department. The delivery of the IRS Form 8609 will occur only after the Development Owner has complied with all procedures and requirements listed within the Cost Certification Procedures Manual. Regardless of the year of Application to the Department for Housing Tax Credits, the current year's Cost Certification Procedures Manual must be utilized when filing all cost certification materials. A separate Housing Credit Allocation shall be made with respect to each building within a Development which is eligible for a housing credit; provided, however, that where an allocation is made pursuant to a Carryover Allocation Document on a Development basis in accordance with the Code, §42(h)(1)(F), a housing credit dollar amount shall not be assigned to particular buildings in the Development until the issuance of IRS Form 8609s with respect to such buildings. The Department may delay the issuance of IRS Form 8609 if any Development violates the representations of the Application.

(f) In making a Housing Credit Allocation, the Department shall specify a maximum Applicable Percentage, not to exceed the Applicable Percentage for the building permitted by the Code, §42(b), and a maximum Qualified Basis amount. In specifying the maximum Applicable Percentage and the maximum Qualified Basis amount, the Department shall disregard the first-year conventions described in the Code, §42(f)(2)(A) and §42(f)(3)(B). The Housing Credit Allocation made by the Department shall not exceed the amount necessary to support the extended low-income housing commitment as required by the Code, §42(h)(6)(C)(i).

(g) Development inspections shall be required to show that the Development is built or rehabilitated according to construction threshold criteria and Development characteristics identified at application. At a minimum, all Development inspections must meet Uniform Physical Condition Standards (UPCS) as referenced in Treasury Regulation §1.42-5 (d)(2)(ii) and include an inspection for quality during the construction process while defects can reasonably be corrected and a final inspection at the time the Development is placed in service. All such Development inspections shall be performed by the Department or by an independent Third Party inspector acceptable to the Department. The Development Owner shall pay all fees and costs of said inspections as described in §49.20 of this title. Details regarding the construction inspection process are set forth in the Department Rule §60 of this title, the Department's Compliance Monitoring Policies and Procedures (§2306.081; General Appropriation Act, Article VII, Rider 8(b)).

(h) After the entire Development is placed in service, which must occur prior to the deadline specified in the Carryover Allocation Document and as further outlined in §49.15 of this title, the Development Owner shall be responsible for furnishing the Department with documentation which satisfies the requirements set forth in the Cost Certification Procedures Manual. For purposes of this title, and consistent with IRS Notice 88-116, the placed in service date for a new or existing building used as residential rental property is the date on which the building is ready and available for its specifically assigned function and more specifically when the first Unit in the building is certified as being suitable for occupancy in accordance with state and local law and as certified by the appropriate local authority or registered architect as ready for occupancy. The Cost Certification must be submitted for the entire Development; therefore partial Cost Certifications are not allowed. The Department may require copies of invoices and receipts and statements for materials and labor utilized for the New Construction or Rehabilitation and, if applicable, a closing statement

for the acquisition of the Development as well as for the closing of all interim and permanent financing for the Development. If the Development Owner does not fulfill all representations and commitments made in the Application, the Department may make reasonable reductions to the tax credit amount allocated via the IRS Form 8609, may withhold issuance of the IRS Form 8609s until these representations and commitments are met, and/or may terminate the allocation, if appropriate corrective action is not taken by the Development Owner.

(i) The Board at its sole discretion may allocate credits to a Development Owner in addition to those awarded at the time of the initial Carryover Allocation in instances where there is bona fide substantiation of cost overruns and the Department has made a determination that the allocation is needed to maintain the Development's financial viability.

(j) The Department may, at any time and without additional administrative process, determine to award credits to Developments previously evaluated and awarded credits if it determines that such previously awarded credits are or may be invalid and the owner was not responsible for such invalidity.

§49.17. Board Reevaluation, Appeals Process; Provision of Information or Challenges Regarding Applications; Amendments; Housing Tax Credit and Ownership Transfers; Sale of Tax Credit Properties; Withdrawals; Cancellations; Alternative Dispute Resolution.

(a) Board Reevaluation. (§2306.6731(b)) Regardless of development stage, the Board shall reevaluate a Development that undergoes a substantial change between the time of initial Board approval of the Development and the time of issuance of a Commitment Notice or Determination Notice for the Development. For the purposes of this subsection, substantial change shall be those items identified in subsection (d)(4) of this section. The Board may revoke any Commitment Notice or Determination Notice issued for a Development that has been unfavorably reevaluated by the Board.

(b) Appeals Process. (§2306.6715) An Applicant may appeal decisions made by the Department as follows.

(1) The decisions that may be appealed are identified in subparagraphs (A) - (D) of this paragraph.

(A) A determination regarding the Application's satisfaction of:

(i) Eligibility Requirements;

(ii) Disqualification or debarment criteria;

(iii) Pre-Application or Application Threshold Criteria;

(iv) Underwriting Criteria;

(B) The scoring of the Application under the Application Selection Criteria; and

(C) A recommendation as to the amount of housing tax credits to be allocated to the Application.

(D) Any Department decision that results in termination of an Application.

(2) An Applicant may not appeal a decision made regarding an Application filed by another Applicant.

(3) An Applicant must file its appeal in writing with the Department not later than the seventh day after the date the Department publishes the results of any stage of the Application evaluation process identified in §49.9 of this title. In the appeal, the Applicant must specifically identify the Applicant's grounds for appeal, based on the original Application and additional documentation filed with the original Application. If the appeal relates to the amount of housing tax credits recommended to be allocated, the Department will provide the Applicant with the underwriting report upon request.

(4) The Executive Director of the Department shall respond in writing to the appeal not later than the 14th day after the date of receipt of the appeal. If the Applicant is not satisfied with the Executive Director's response to the appeal, the Applicant may appeal directly in writing to the Board, provided that an appeal filed with the Board under this subsection must be received by the Board before:

(A) The seventh day preceding the date of the Board meeting at which the relevant commitment decision is expected to be made; or

(B) The third day preceding the date of the Board meeting described by subparagraph (A) of this paragraph, if the Executive Director does not respond to the appeal before the date described by subparagraph (A) of this paragraph.

(5) Board review of an appeal under paragraph (4) of this subsection is based on the original Application and additional documentation filed with the original Application. The Board may not review any information not contained in or filed with the original Application. The decision of the Board regarding the appeal is final.

(6) The Department will post to its web site an appeal filed with the Department or Board and any other document relating to the processing of the appeal. (§2306.6717(a)(5))

(c) Provision of Information or Challenges Regarding Applications from Unrelated Entities to the Application. The Department will address information or challenges received from unrelated entities to a specific 2007 active Application, utilizing a preponderance of the evidence standard, in the following manner, provided the information or challenge includes a contact name, telephone number, fax number and e-mail address of the person providing the information or challenge:

(1) Within 14 business days of the receipt of the information or challenge, the Department will post all information and challenges received (including any identifying information) to the Department's website.

(2) Within seven business days of the receipt of the information or challenge, the Department will notify the Applicant related to the information or challenge. The Applicant will then have seven business days to respond to all information and challenges provided to the Department.

(3) Within 14 business days of the receipt of the response from the Applicant, the Department will evaluate all information submitted and other relevant documentation related to the investigation. This information may include information requested by the Department relating to this evaluation. The Department will post its determination summary to its website. Any determinations made by the Department cannot be appealed by any party unrelated to the Applicant.

(d) Amendment of Application Subsequent to Allocation by Board. (§2306.6712 and §2306.6717(a)(4))

(1) If a proposed modification would materially alter a Development approved for an allocation of a housing tax credit, or if the Applicant has altered any selection criteria item for which it received points, the Department shall require the Applicant to file a formal, written request for an amendment to the Application.

(2) The Executive Director of the Department shall require the Department staff assigned to underwrite Applications to evaluate the amendment and provide an analysis and written recommendation

to the Board. The appropriate party monitoring compliance during construction in accordance with §49.18 of this title shall also provide to the Board an analysis and written recommendation regarding the amendment. For amendments which require Board approval, the amendment request must be received by the Department at least 30 days prior to the Board meeting where the amendment will be considered.

(3) The Board must vote on whether to approve an amendment. The Board by vote may reject an amendment and, if appropriate, rescind a Commitment Notice or terminate the allocation of housing tax credits and reallocate the credits to other Applicants on the Waiting List if the Board determines that the modification proposed in the amendment:

(A) would materially alter the Development in a negative manner; or

(B) would have adversely affected the selection of the Application in the Application Round.

(4) Material alteration of a Development includes, but is not limited to:

(A) a significant modification of the site plan;

(B) a modification of the number of units or bedroom mix of units;

(C) a substantive modification of the scope of tenant services;

(D) a reduction of three percent or more in the square footage of the units or common areas;

(E) a significant modification of the architectural design of the Development;

(F) a modification of the residential density of the Development of at least five percent;

(G) an increase or decrease in the site acreage of greater than 10% from the original site under control and proposed in the Application; and

(H) any other modification considered significant by the Board.

(5) In evaluating the amendment under this subsection, the Department staff shall consider whether the need for the modification proposed in the amendment was:

(A) Reasonably foreseeable by the Applicant at the time the Application was submitted; or

(B) Preventable by the Applicant.

(6) This section shall be administered in a manner that is consistent with the Code, §42.

(7) Before the 15th day preceding the date of Board action on the amendment, notice of an amendment and the recommendation of the Executive Director and monitor regarding the amendment will be posted to the Department's web site.

(8) In the event that an Applicant or Developer seeks to be released from the commitment to serve the income level of tenants targeted in the original Application, the following procedure will apply. For amendments that involve a reduction in the total number of low-income Units being served, or a reduction in the number of low-income Units at any level of AMGI represented at the time of Application, evidence must be presented to the Department that includes written confirmation from the lender and syndicator that the Development is infeasible without the adjustment in Units. The Board may or may not approve the amendment request, however, any affirmative recommendation to the Board is contingent upon concurrence from the Real Estate Analysis Division that the Unit adjustment (or an alternative Unit adjustment) is necessary for the continued feasibility of the Development. Additionally, if it is determined by the Department that the allocation of credits would not have been made in the year of allocation because the loss of low-income targeting points would have resulted in the Application not receiving an allocation, and the amendment is approved by the Board, the approved amendment will carry a penalty that prohibits the Applicant and all persons or entities with any ownership interest in the Application (excluding any tax credit purchaser/syndicator), from participation in the Housing Tax Credit Program (for both the Competitive Housing Tax Credit Developments and Tax-Exempt Bond Developments) for 24 months from the time that the amendment is approved.

(e) Housing Tax Credit and Ownership Transfers. (§2306.6713) A Development Owner may not transfer an allocation of housing tax credits or ownership of a Development supported with an allocation of housing tax credits to any Person other than an Affiliate of the Development Owner unless the Development Owner obtains the Executive Director's prior, written approval of the transfer. The Executive Director may not unreasonably withhold approval of the transfer.

(1) Transfers will not be approved prior to the issuance of IRS Forms 8609 unless the Development Owner can provide evidence that a hardship is creating the need for the transfer (potential bankruptcy, removal by a partner, etc.). A Development Owner seeking Executive Director approval of a transfer and the proposed transferee must provide to the Department a copy of any applicable agreement between the parties to the transfer, including any third-party agreement with the Department.

(2) A Development Owner seeking Executive Director approval of a transfer must provide the Department with documentation requested by the Department, including but not limited to, a list of the names of transferees and Related Parties; and detailed information describing the experience and financial capacity of transferees and related parties. All transfer requests must disclose the reason for the request. The Development Owner shall certify to the Executive Director that the tenants in the Development have been notified in writing of the transfer before the 30th day preceding the date of submission of the transfer request to the Department. Not later than the fifth working day after the date the Department receives all necessary information under this section, the Department shall conduct a qualifications review of a transferee to determine the transferee's past compliance with all aspects of the Housing Tax Credit Program, LURAs; and the sufficiency of the transferee's experience with Developments supported with Housing Credit Allocations. If the viable operation of the Development is deemed to be in jeopardy by the Department, the Department may authorize changes that were not contemplated in the Application.

(3) As it relates to the Credit Cap further described in §49.6(d) of this title, the credit cap will not be applied in the following circumstances:

(A) In cases of transfers in which the syndicator, investor or limited partner is taking over ownership of the Development and not merely replacing the general partner; or

(B) In cases where the general partner is being replaced if the award of credits was made at least five years prior to the transfer request date.

(f) Sale of Certain Tax Credit Properties. Consistent with §2306.6726, Texas Government Code, not later than two years before the expiration of the Compliance Period, a Development Owner who

agreed to provide a right of first refusal under §2306.6725(b)(1), Texas Government Code and who intends to sell the property shall notify the Department of its intent to sell.

(1) The Development Owner shall notify Qualified Nonprofit Organizations and tenant organizations of the opportunity to purchase the Development. The Development Owner may:

(A) During the first six-month period after notifying the Department, negotiate or enter into a purchase agreement only with a Qualified Nonprofit Organization that is also a community housing development organization as defined by the Federal Home Investment Partnership Program (HOME);

(B) During the second six-month period after notifying the Department, negotiate or enter into a purchase agreement with any Qualified Nonprofit Organization or tenant organization; and

(C) During the year before the expiration of the compliance period, negotiate or enter into a purchase agreement with the Department or any Qualified Nonprofit Organization or tenant organization approved by the Department.

(2) Notwithstanding items for which points were received consistent with §49.9(i) of this title, a Development Owner may sell the Development to any purchaser after the expiration of the compliance period if a Qualified Nonprofit Organization or tenant organization does not offer to purchase the Development at the minimum price provided by §42(i)(7), Internal Revenue Code of 1986 (26 U.S.C. §42(i)(7)), and the Department declines to purchase the Development.

(g) Withdrawals. An Applicant may withdraw an Application prior to receiving a Commitment Notice, Determination Notice, Carryover Allocation Document or Housing Credit Allocation, or may cancel a Commitment Notice or Determination Notice by submitting to the Department a notice, as applicable, of withdrawal or cancellation, and making any required statements as to the return of any tax credits allocated to the Development at issue.

(h) Cancellations. The Department may cancel a Commitment Notice, Determination Notice or Carryover Allocation prior to the issuance of IRS Form 8609 with respect to a Development if:

(1) The Applicant or the Development Owner, or the Development, as applicable, fails to meet any of the conditions of such Commitment Notice or Carryover Allocation or any of the undertakings and commitments made by the Development Owner in the Applications process for the Development;

(2) Any statement or representation made by the Development Owner or made with respect to the Development Owner or the Development is untrue or misleading;

(3) An event occurs with respect to the Applicant or the Development Owner which would have made the Development's Application ineligible for funding pursuant to §49.5 of this title if such event had occurred prior to issuance of the Commitment Notice or Carryover Allocation; or

(4) The Applicant or the Development Owner or the Development, as applicable, fails to comply with these Rules or the procedures or requirements of the Department.

(i) Alternative Dispute Resolution Policy. In accordance with §2306.082, Texas Government Code, it is the Department's policy to encourage the use of appropriate alternative dispute resolution procedures ("ADR") under the Governmental Dispute Resolution Act, Chapter 2009, Texas Government Code, to assist in resolving disputes under the Department's jurisdiction. As described in Chapter 154, Civil Practices and Remedies Code, ADR procedures include mediation. Except as prohibited by the Department's ex parte communications policy, the Department encourages informal communications between Department staff and Applicants, and other interested persons, to exchange information and informally resolve disputes. The Department also has administrative appeals processes to fairly and expeditiously resolve disputes. If at anytime an Applicant or other person would like to engage the Department in an ADR procedure, the person may send a proposal to the Department's Dispute Resolution Coordinator. For additional information on the Department's ADR Policy, see the Department's General Administrative Rule on ADR at §1.17 of this title.

§49.18. Compliance Monitoring and Material Noncompliance.

The Code, §42(m)(1)(B)(iii), requires the Department as the housing credit agency to include in its QAP a procedure that the Department will follow in monitoring Developments for compliance with the provisions of the Code, §42 and in notifying the IRS of any noncompliance of which the Department becomes aware. Detailed compliance rules and procedures for monitoring are set forth in Department Rule §60 of this title.

§49.19. Department Records; Application Log; IRS Filings.

(a) Department Records. At all times during each calendar year the Department shall maintain a record of the following:

(1) The cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Commitment Notices during such calendar year;

(2) The cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Carryover Allocation Documents during such calendar year;

(3) The cumulative amount of Housing Credit Allocations made during such calendar year; and

(4) The remaining unused portion of the State Housing Credit Ceiling for such calendar year.

(b) Application Log. (§2306.6702(a)(3) and §2306.6709) The Department shall maintain for each Application an Application Log that tracks the Application from the date of its submission. The Application Log will contain, at a minimum, the information identified in paragraphs (1) - (9) of this subsection.

(1) The names of the Applicant and all General Partners of the Development Owner, the owner contact name and phone number, and full contact information for all members of the Development Team;

(2) The name, physical location, and address of the Development, including the relevant Uniform State Service Region of the state;

(3) The number of Units and the amount of housing tax credits requested for allocation by the Department to the Applicant;

(4) Any Set-Aside category under which the Application is filed;

(5) The requested and awarded score of the Application in each scoring category adopted by the Department under the Qualified Allocation Plan;

(6) Any decision made by the Department or Board regarding the Application, including the Department's decision regarding whether to underwrite the Application and the Board's decision regarding whether to allocate housing tax credits to the Development;

(7) The names of individuals making the decisions described by paragraph (6) of this subsection, including the names of Department staff scoring and underwriting the Application, to be recorded next to the description of the applicable decision;

(8) The amount of housing tax credits allocated to the Development; and

(9) A dated record and summary of any contact between the Department staff, the Board, and the Applicant or any Related Parties.

(c) IRS Filings. The Department shall mail to the Internal Revenue Service, not later than the 28th day of the second calendar month after the close of each calendar year during which the Department makes Housing Credit Allocations, a copy of each completed (as to Part I) IRS Form 8609, the original of which was mailed or delivered by the Department to a Development Owner during such calendar year, along with a single completed IRS Form 8610, Annual Low-income Housing Credit Agencies Report. When a Carryover Allocation is made by the Department, a copy of the Carryover Allocation Agreement will be mailed or faxed to the Development Owner by the Department. The original of the Carryover Allocation Document will be retained by the Department and IRS Form 8610 Schedule A will be filed by the Department with IRS Form 8610 for the year in which the allocation is made. The Department shall be authorized to vary from the requirements of this section to the extent required to adapt to changes in IRS requirements.

§49.20. Program Fees; Refunds; Public Information Requests; Adjustments of Fees and Notification of Fees; Extensions; Penalties.

(a) Timely Payment of Fees. All fees must be paid as stated in this section, unless the Executive Director has granted a waiver for specific extenuating and extraordinary circumstances. To be eligible for a waiver, the Applicant must submit a request for a waiver no later than 10 business days prior to the deadlines as stated in this section. Any fees, as further described in this section, that are not timely paid will cause an Applicant to be ineligible to apply for tax credits and additional tax credits and ineligible to submit extension requests, ownership changes and Application amendments. Payments made by check, for which insufficient funds are available, may cause the Application, commitment or allocation to be terminated.

(b) Pre-Application Fee. Each Applicant that submits a Pre-Application shall submit to the Department, along with such Pre-Application, a non refundable Pre-Application fee, in the amount of $10 per Unit. Units for the calculation of the Pre-Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Pre-Applications without the specified Pre-Application Fee in the form of a check will not be accepted. Pre-Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as the managing General Partner of the Development Owner, or Control the managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Pre-Application fee. (General Appropriation Act, Article VII, Rider 7; §2306.6716(d))For Tax Exempt Bond Developments with the Department as the issuer, the Applicant shall submit the following fees: $1,000 (payable to TDHCA), $1,500 (payable to Vincent & Elkins, Bond Counsel), and $5,000 (payable to the Texas Bond Review Board).

(c) Application Fee. Each Applicant that submits an Application shall submit to the Department, along with such Application, an Application fee. For Applicants having submitted a Pre-Application which met Pre-Application Threshold and for which a Pre-Application fee was paid, the Application fee will be $20 per Unit. For Applicants not having submitted a Pre-Application, the Application fee will be $30 per Unit. Units for the calculation of the Application Fee include all Units within the Development, including tax credit, market rate and owner-occupied Units. Applications without the specified Application Fee in the form of a check will not be accepted. Applications in which a CHDO or Qualified Nonprofit Organization intends to serve as he managing General Partner of the Development Owner, or Control the managing General Partner of the Development Owner, will receive a discount of 10% off the calculated Application fee. (General Appropriation Act, Article VII, Rider 7; §2306.6716(d)) FoA Tax Exempt Bond developments with the Department as the Issuer the Applicant shall submit a tax credit application fee of $30 per unit and bond application fee of $10,000. Those applications utilizing a local issuer only need to submit the tax credit application fee.

(d) Refunds of Pre-Application or Application Fees. (§2306.6716(c)) Upon written request from the Applicant, the Department shall refund the balance of any fees collected for a Pre-Application or Application that is withdrawn by the Applicant or that is not fully processed by the Department. The amount of refund on Pre-Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 50% of the review, and Threshold review prior to a deficiency issued will constitute 30% of the review. Deficiencies submitted and reviewed constitute 20% of the review. The amount of refund on Applications not fully processed by the Department will be commensurate with the level of review completed. Intake and data entry will constitute 20% of the review, the site visit will constitute 20% of the review, Eligibility and Selection review will constitute 20%, and Threshold review will constitute 20% of the review, and underwriting review will constitute 20%. The Department must provide the refund to the Applicant not later than the 30th day after the date of request.

(e) Third Party Underwriting Fee. Applicants will be notified in writing prior to the evaluation of a Development by an independent external underwriter in accordance with §§49.9(d)(6), (e)(3), and (f)(4) of this title if such a review is required. The fee must be received by the Department prior to the engagement of the underwriter. The fees paid by the Development Owner to the Department for the external underwriting will be credited against the commitment fee established in subsection (f) of this section, in the event that a Commitment Notice or Determination Notice is issued by the Department to the Development Owner.

(f) Commitment or Determination Notice Fee. Each Development Owner that receives a Commitment Notice or Determination Notice shall submit to the Department, not later than the expiration date on the Commitment or Determination notice, a non-refundable commitment fee equal to 5% of the annual Housing Credit Allocation amount. The commitment fee shall be paid by check. If a Development Owner of an Application awarded Competitive Housing Tax Credits has paid a Commitment Fee and returns the credits by November 1, 2007, the Development Owner will receive a refund of 50% of the Commitment Fee.

(g) Compliance Monitoring Fee. Upon receipt of the cost certification, the Department will invoice the Development Owner for compliance monitoring fees. The amount due will equal $40 per tax credit unit. The fee will be collected, retroactively if applicable, beginning with the first year of the credit period. The invoice must be paid prior to the issuance of form 8609. Subsequent anniversary dates on which the compliance monitoring fee payments are due shall be determined by the beginning month of the compliance period.

(h) Building Inspection Fee. The Building Inspection Fee must be paid at the time the Commitment Fee is paid. The Building Inspection Fee for all Developments is $750. Inspection fees in excess of $750 may be charged to the Development Owner not to exceed an additional $250 per Development.

(i) Tax-Exempt Bond Credit Increase Request Fee. As further described in §49.12 of this title, requests for increases to the credit amounts to be issued on IRS Forms 8609 for Tax-Exempt Bond De-

velopments must be submitted with a request fee equal to five percent of the amount of the credit increase for one year.

(j) Public Information Requests. Public information requests are processed by the Department in accordance with the provisions of the Government Code, Chapter 552. The Department uses the guidelines promulgated by The Texas Building and Procurement Commission to determine the cost of copying, and other costs of production.

(k) Periodic Adjustment of Fees by the Department and Notification of Fees. (§2306.6716(b)) All fees charged by the Department in the administration of the tax credit program will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses. The Department shall publish each year an updated schedule of Application fees that specifies the amount to be charged at each stage of the Application process. Unless otherwise determined by the Department, all revised fees shall apply to all Applications in process and all Developments in operation at the time of such revisions.

(l) Extension and Amendment Requests. All extension requests relating to the Commitment Notice, Carryover, Documentation for 10% Test, Substantial Construction Commencement, Placed in Service or Cost Certification requirements and amendment requests shall be submitted to the Department in writing and be accompanied by a mandatory non-refundable extension fee in the form of a check in the amount of $2,500. Such requests must be submitted to the Department no later than the date for which an extension is being requested. All requests for extensions totaling less than 6 months may be approved by the Executive Director and are not required to have Board approval. For extensions that require Board approval, the extension request must be received by the Department at least 15 business days prior to the Board meeting where the extension will be considered. The extension request shall specify a requested extension date and the reason why such an extension is required. Carryover extension requests shall not request an extended deadline later than December 1st of the year the Commitment Notice was issued. The Department, in its sole discretion, may consider and grant such extension requests for all items. If an extension is required at Cost Certification, the fee of $2,500 must be received by the Department to qualify for issuance of Forms 8609. Amendment requests must be submitted consistent with §49.17(d) of this title. The Board may waive related fees for good cause.

(m) Penalties. Development Owners who have more tax credits allocated to them than they can substantiate through Cost Certification will return those excess tax credits prior to issuance of 8609's. For Competitive Housing Tax Credit Developments, a penalty fee equal to the one year credit amount of the lost credits (10% of the total unused tax credit amount) will be required to be paid by the Owner prior to the issuance of form 8609's if the tax credits are not returned, and 8609's issued, within 180 days of the end of the first year of the credit period. This penalty fee may be waived without further Board action if the Department recaptures and re-issues the returned tax credits in accordance with §42, Internal Revenue Code.

§49.21. Manner and Place of Filing All Required Documentation.

(a) All Applications, letters, documents, or other papers filed with the Department must be received only between the hours of 8:00 a.m. and 5:00 p.m. on any day which is not a Saturday, Sunday or a holiday established by law for state employees.

(b) All notices, information, correspondence and other communications under this title shall be deemed to be duly given if delivered or sent and effective in accordance with this subsection. Such correspondence must reference that the subject matter is pursuant to the Tax Credit Program and must be addressed to the Housing Tax Credit Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, TX 78711-3941 or for hand delivery or courier to 221 East 11th Street, Austin, Texas 78701 or more current address of the Department as released on the Department's website. Every such correspondence required or contemplated by this title to be given, delivered or sent by any party may be delivered in person or may be sent by courier, telecopy, express mail, telex, telegraph or postage prepaid certified or registered air mail (or its equivalent under the laws of the country where mailed), addressed to the party for whom it is intended, at the address specified in this subsection. Regardless of method of delivery, documents must be received by the Department no later than 5:00 p.m. for the given deadline date. Notice by courier, express mail, certified mail, or registered mail will be considered received on the date it is officially recorded as delivered by return receipt or equivalent. Notice by telex or telegraph will be deemed given at the time it is recorded by the carrier in the ordinary course of business as having been delivered, but in any event not later than one business day after dispatch. Notice not given in writing will be effective only if acknowledged in writing by a duly authorized officer of the Department.

(c) If required by the Department, Development Owners must comply with all requirements to use the Department's web site to provide necessary data to the Department.

§49.22. Waiver and Amendment of Rules.

(a) The Board, in its discretion, may waive any one or more of these Rules if the Board finds that waiver is appropriate to fulfill the purposes or policies of Chapter 2306, Texas Government Code, or for other good cause, as determined by the Board.

(b) Section 1.13 of this title may be waived for any person seeking any action by filing a request with the Board.

(c) The Department may amend this chapter and the Rules contained herein at any time in accordance with the Government Code, Chapter 2001.

§49.23. Deadlines for Allocation of Housing Tax Credits. (§2306.6724)

(a) Not later than September 30 of each year, the Department shall prepare and submit to the Board for adoption the draft QAP required by federal law for use by the Department in setting criteria and priorities for the allocation of tax credits under the Housing Tax Credit program.

(b) The Board shall adopt and submit to the Governor the QAP not later than November 15 of each year.

(c) The Governor shall approve, reject, or modify and approve the QAP not later than December 1 of each year. (§2306.67022)(§42(m)(1))

(d) The Board shall annually adopt a manual, corresponding to the QAP, to provide information on how to apply for housing tax credits.

(e) Applications for Housing Tax Credits to be issued a Commitment Notice during the Application Round in a calendar year must be submitted to the Department not later than March 1.

(f) The Board shall review the recommendations of Department staff regarding Applications and shall issue a list of approved Applications each year in accordance with the Qualified Allocation Plan not later than June 30.

(g) The Board shall approve final commitments for allocations of housing tax credits each year in accordance with the Qualified Allocation Plan not later than July 31, unless unforeseen circumstances prohibit action by that date. In any event, the Board shall approve final commitments for allocations of housing tax credits each year in accordance with the Qualified Allocation Plan not later than September 30.

Department staff will subsequently issue Commitment Notices based on the Board's approval. Final commitments may be conditioned on various factors approved by the Board, including resolution of contested matters in litigation.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2007.

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Michael Gerber
Executive Director
Texas Department of Housing and Community Affairs
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For further information, please call: (512) 475-4595

PART 6. OFFICE OF RURAL COMMUNITY AFFAIRS

CHAPTER 255. TEXAS COMMUNITY DEVELOPMENT PROGRAM

The Office of Rural Community Affairs (Office) adopts the amendments to 10 Texas Administrative Code §§255.1 - 255.16 and §255.41 for the Community Development Block Grant (CDBG) non-entitlement area funds with changes to the proposed text as published in the November 10, 2006, issue of the *Texas Register* (31 TexReg 9108) and will not be republished.

The adopted rules change Texas Community Development Program (TCDP) to Texas Community Development Block Grant Program (TxCDBG). Furthermore, the adopted rules specify criteria contained within the 2007 Action Plan.

No comments were received regarding the adoption of the amendments.

SUBCHAPTER A. ALLOCATION OF PROGRAM FUNDS

10 TAC §§255.1 - 255.16

The amendments are adopted under §487.052 of the Government Code, which provides the executive committee with the authority to adopt rules concerning the implementation of the Office's responsibilities.

§255.1. General Provisions.

(a) Definitions and abbreviations. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Applicant--A unit of general local government which is preparing to submit or has submitted an application for Texas Community Development funds to the Office or to the Texas Department of Agriculture (TDA).

(2) Application--A written request for Texas Community Development Block Grant Program TxCDBG funds in the format required by the Office or by the TDA for Texas Capital Fund TCF applications.

(3) Community Development Block Grant nonentitlement area funds--The funds awarded to the State of Texas pursuant to the Housing and Community Development Act of l974, Title I, as amended (42 United States Code §§5301 et seq.), and the regulations promulgated thereunder in 24 Code of Federal Regulations Part 570.

(4) Community--A unit of general local government.

(5) Contract--A written agreement, including all amendments thereto, executed by the Office, or by the TDA, and contractor which is funded with community development block grant nonentitlement area funds.

(6) Contractor--A unit of general local government with which the Office or the TDA has executed a contract.

(7) Office--The Office of Rural Community Affairs.

(8) Local government--A unit of general local government.

(9) Low-and moderate-income person--A member of a family which earns less than 80% of the area median family income, as defined under the United States Department of Housing and Urban Development §8 Assisted Housing Program.

(10) Nonentitlement area--An area which is not a metropolitan city or part of an urban county as defined in 42 United States Code, §5302.

(11) Poverty--The current official poverty line established by the Director of the Federal Office of Management and Budget.

(12) Primary beneficiary--A low or moderate income person.

(13) Regional review committee--A regional community development review committee, one of which is established in each of the 24 state planning regions established by the governor pursuant to Texas Local Government Code, §391.003.

(14) Slum or blighted area--An area which has been designated a state enterprise zone, or an area within a municipality or county that is detrimental to the public health, safety, morals, and welfare of the municipality or county because the area:

(A) has a predominance of buildings or other improvements that are dilapidated, deteriorated, or obsolete due to age or other reasons;

(B) is prone to high population densities and overcrowding due to inadequate provision for open space;

(C) is composed of open land that, because of its location within municipal or county limits, is necessary for sound community growth through replatting, planning, and development for predominantly residential uses; or

(D) has conditions that exist due to any of the causes enumerated in subparagraphs (A) - (C) of this paragraph or any combination of those causes that:

(i) endanger life or property by fire or other causes; or

(ii) are conducive to:

(I) the ill health of the residents;

(II) disease transmission;

(III) abnormally high rates of infant mortality;

(IV) abnormally high rates of juvenile delinquency and crime; or

(V) disorderly development because of inadequate or improper platting for adequate residential development of lots, streets, and public utilities.

(15) Slum or blight, spot basis--A building which has been declared as a slum or blight and has multiple and unattended building code violations, and qualifies as slum or blighted on a spot basis under local law.

(16) State review committee--The State Community Development Review Committee established pursuant to Texas Government Code, §487.353.

(17) Unemployed person--A person between the ages of 16 and 64, inclusive, who is not presently working but is seeking employment.

(18) Unit of general local government--An entity defined as a unit of general local government in 42 United States Code §5302(a)(1), as amended.

(b) Overview--Community Development Block Grant nonentitlement area funds are distributed by the TxCDBG to eligible units of general local government in the following program areas:

(1) community development fund and community development supplemental fund;

(2) Texas Capital fund. The Texas Capital Fund TCF is administered by the TDA under an interagency agreement with the Office. Applications for the TCF shall be submitted to the TDA.

(3) planning/capacity building fund;

(4) disaster relief fund;

(5) urgent need fund;

(6) colonia fund;

(7) Young v. Martinez fund (discontinued after 2003 program year);

(8) housing fund (discontinued after 2004 program year);

(9) small towns environment program fund;

(10) microenterprise fund (program income);

(11) small business fund (program income);

(12) section 108 loan guarantee pilot program;

(13) community development supplemental fund;

(14) non-border colonia fund.

(c) Types of applications.

(1) Single jurisdiction applications. An applicant may submit one application per TxCDBG fund, as outlined in subsection (b) of this section, on its own behalf, or as a participant in a multi-jurisdictional application, per funding cycle (except as specified for the TCF, community development fund, housing fund, colonia fund, and small towns environment program fund).

(A) A city may submit a single jurisdiction application that includes beneficiaries located within the extraterritorial jurisdiction of the city. However, the applicant must document that each activity benefiting persons located in its extraterritorial jurisdiction is meeting its community and housing development needs, including the needs of low and moderate income persons. A city cannot submit a single jurisdiction application that includes beneficiaries located inside the corporate city limits and outside of the city's extraterritorial jurisdiction. In this instance, the city and county in which the beneficiaries outside of the city's extraterritorial jurisdiction are located must submit the project as a multi-jurisdiction application.

(B) A county may submit an application on behalf of an incorporated city when the proposed application activities provide improvements to a public facility or service that is not owned or operated by the incorporated city and the persons benefiting from the application activities are located within the city's corporate city limits or the city's extraterritorial jurisdiction. If a county submits an application on behalf of an incorporated city, then the county and that city cannot submit another single jurisdiction application or be a participating jurisdiction in a multi-jurisdiction application submitted under the same TxCDBG fund category.

(C) A county may submit a single jurisdiction application for a housing rehabilitation program that includes the rehabilitation of housing units in unincorporated areas and incorporated cities located in the county. The housing units that are rehabilitated under the county program must be located in unincorporated areas and in each incorporated city that is included as a participant in the county housing rehabilitation program. If a county submits a housing rehabilitation program application that includes the rehabilitation of housing units in incorporated cities, then the county cannot submit another single jurisdiction application or be a participating jurisdiction in a multi-jurisdiction application submitted under the same TxCDBG fund category.

(D) An application from an eligible city or county for a project that would primarily benefit another city or county that was not meeting the TxCDBG application threshold requirements would be considered ineligible.

(2) Multi jurisdiction applications. Subject to each participating community satisfying the application requirements of the TxCDBG fund under which the application is submitted and this paragraph, an application will be accepted from two or more units of general local government if the application clearly demonstrates that the proposed activities will mutually benefit the residents of the communities applying for funds. A multi-jurisdiction application solely for administrative convenience will not be accepted. Any community participating in a multi-jurisdiction application may not submit a single jurisdiction application under the project fund for which the multi-jurisdiction application was submitted. One of the participating communities must be primarily accountable to the Office and the TDA, in instances where the TCF is accessed, for financial compliance and program performance; however, all entities participating in the multi-jurisdiction application will be accountable for application threshold compliance. Only one unit of general local government may be the official applicant and this applicant must enter into a legally binding cooperation agreement with each participant that incorporates TxCDBG requirements. A proposed project which is located in more than one jurisdiction or in which beneficiaries from more than one jurisdiction will be counted must be submitted as a multi-jurisdiction application (except as specified for the TCF and single jurisdiction applications described in paragraph (1)(A) - (D) of this subsection).

(d) Eligible location. Only projects or activities which are located in the nonentitlement areas of the state are eligible for funding under the TxCDBG. An exception to this requirement is Hidalgo County, an entitlement county, which is eligible for the colonia fund. Another exception to this requirement is that entitlement areas located in disaster recovery initiative eligible counties are eligible locations for disaster recovery initiative funds.

(e) Ineligible activities. Any type of activity not described or referred to in the Federal Housing and Community Development Act of 1974, §5305(a) (42 United States Code §5301 et seq.) is ineligible for funding under the TxCDBG.

(1) Specific ineligible activities include, but are not limited to: construction of buildings and facilities used for the general conduct of government (e.g., city halls and courthouses); new housing construction, except as described as eligible under the current TxCDBG application guides; the financing of political activities; purchases of construction equipment (except in limited circumstances under the small towns environment program); income payments, such as housing allowances; most operation and maintenance expenses (including smoke testing to determine the overall scope and location of the project work activities) ; pre-contract costs, except for costs incurred prior to submittal of an application and paid with local government or other funds for administrative consultant and engineering/architectural services and pre-agreement costs described in a TxCDBG contract; prisons/detention centers; government supported facilities; and racetracks.

(2) The following activities and/or uses are specifically ineligible under the TCF: monies may not be used for speculation, investment or excess improvements over the minimum improvements needed for the business. TCF funds may not be utilized for refinancing or to repay the applicant, a local related economic development entity, the benefiting business or its owners and related parties for expenditures. Educational institutions, including but not limited to colleges and/or universities, and governmental entities may not qualify as the benefiting business. Ineligible infrastructure activities/improvements include, but are not limited to: landfills, incinerators, recycling facilities, machinery and equipment. Real estate improvements designed and/or built for a single, special or limited use or purpose are an ineligible use of funds. Real estate improvements do not include machinery and equipment used in the production and/or services marketed by the business.

(f) Citizen Participation.

(1) Public hearing requirements. For each public hearing scheduled and conducted by an applicant or contractor, the following public hearing requirements shall be followed.

(A) Notice of each hearing must be published in a newspaper having general circulation in the city or county at least 72 hours prior to each scheduled hearing. The published notice must include the date, time, and location of each hearing and the topics to be considered at each hearing. The published notice must be printed in both English and Spanish, if appropriate. Articles published in such newspapers which satisfy the content and timing requirements of this subparagraph will be accepted by the Office and, in the case of TCF hearings, by the TDA, in lieu of publication of notices. Notices should also be prominently posted in public buildings and distributed to local Public Housing Authorities and other interested community groups.

(B) Each public hearing shall be held at a time and location convenient to potential or actual beneficiaries, with accommodation for persons with disabilities. Persons with disabilities must be able to attend the hearings and an applicant must make arrangements for individuals who require auxiliary aids or services if contacted at least two days prior to each hearing.

(C) When a significant number of non-English speaking residents can reasonably be expected to participate in a public hearing, an applicant or contractor shall provide an interpreter to accommodate the needs of the non-English speaking residents.

(2) Application requirements. Prior to submitting a formal application, an applicant for TxCDBG funding shall satisfy the following requirements.

(A) At least one public hearing shall be held prior to the preparation of its application and a public notice shall be published in a newspaper having general circulation in the city or county notifying the public of the availability of the application for public review prior to submitting its completed application to the Office and, in the case of TCF applications, to the TDA. The requirements described in this subparagraph are not applicable to applications submitted under the housing infrastructure fund.

(B) For an application submitted for housing infrastructure fund assistance, an applicant must hold two public hearings. At least one public hearing shall be held prior to the preparation of the application and a second public hearing shall be held prior to submission of the application.

(C) An applicant shall retain documentation of the hearing notices, a list of attendees at each hearing, minutes of the hearings, and any other records concerning the proposed use of funds for a period of three years or until the project, if funded, is closed out. Such records must be made available to the public in accordance with Texas Government Code, Chapter 552.

(D) The public hearing must include a discussion with citizens on the development of housing and community development needs, the amount of funding available, all eligible activities under the TxCDBG, the plans of the applicant to minimize displacement of persons and to assist persons actually displaced as a result of activities assisted with TxCDBG funds, and the use of past TxCDBG contract funds, if applicable. Citizens, with particular emphasis on persons of low and moderate income who are residents of slum and blight areas, shall be encouraged to submit their views and proposals regarding community development and housing needs. Local organizations that provide services or housing for low to moderate income persons, including but not limited to, the local or area Public Housing Authority, the local or area Health and Human Services office, and the local or area Mental Health and Mental Retardation office, must receive written notification concerning the date, time, location, and topics to be covered at the first public hearing. Citizens shall be made aware of the location where they may submit their views and proposals should they be unable to attend the public hearing. For submission of a housing infrastructure fund application, these requirements must be followed for the first public hearing.

(E) The notice announcing the availability of the application for public review must be published five days prior to the submission of the application and the published notice must include the fund category for which the application is submitted, the amount of funds requested, a description of the application activities, the location or locations of the application activities, and the location and hours when the application is available for review.

(F) The second public hearing for a housing infrastructure fund application must include a discussion with citizens on the proposed project, including the locations and the project activities, the amount of funds being requested, and the estimated amount of funds proposed for activities that will benefit low and moderate income persons. The published notice for this public hearing must include the location and hours when the application is available for review.

(G) Any public hearing held prior to submission of the application must be held after 5:00 p.m. on a weekday or at a convenient time on a Saturday or Sunday.

(3) Contractor requirements.

(A) A contractor must hold a public hearing concerning any substantial change, as determined by the Office and, in the case of TCF program changes, by the TDA, proposed to be made in the use of TxCDBG funds from one eligible activity to another.

(B) Upon completion of its contract, the contractor shall hold a public hearing to review its program performance, including the actual use of the funds provided under the contract.

(C) A contractor shall retain documentation of the hearing notices, a list of attendees at each hearing, minutes of the hearings, and any other records concerning the actual use of funds for a period of three years after the contract is closed out. Such records must be made available to the public in accordance with Texas Government Code, Chapter 552.

(D) The public hearings must be held after 5:00 p.m. on a weekday or at a convenient time on a Saturday or Sunday.

(4) Complaint procedures. Applicants and contractors must maintain written citizen complaint procedures that provide a timely written response to complaints and grievances. Citizens must be made aware of the location and hours at which they may obtain a copy of the written procedures.

(5) Technical assistance. An applicant shall provide technical assistance to groups representative of persons of low-and moderate-income that request such assistance in developing proposals for the use of TxCDBG funds. The level and type of assistance shall be determined by the applicant based upon the specific needs of its residents.

(g) Appeals. An applicant for funding under the TxCDBG may appeal the disposition of its application in accordance with this subsection.

(1) The appeal may only be based on one or more of the following grounds.

(A) Misplacement of an application. All or a portion of an application is lost, misfiled, or otherwise misplaced by Office staff and, in the case of TCF applications, by TDA staff, resulting in unequal consideration of the applicant's proposal.

(B) Mathematical error. In rating the application, the score on any selection criteria is incorrectly computed by the Office and, in the case of TCF applications, by the TDA due to human or computer error.

(C) Other procedural error. The application is not processed by the Office and, in the case of TCF applications, by the TDA, in accordance with the application and selection procedures set forth in this subchapter. Procedural errors alleged to have been committed by a regional review committee may only be appealed in accordance with the provisions of §255.8 of this title (relating to Regional Review Committees).

(2) The appeal must be submitted in writing to the TxCDBG of the Office no later than 30 days after the date the announcement of community development fund, community development supplemental fund and planning/capacity building fund contract awards is published in the Texas Register. In addition, timely appeals not submitted in writing at least five working days prior to the next regularly scheduled meeting of the state review committee will be heard at the subsequent meeting of the state review committee. The Office staff will evaluate the appeal and may either concur with the appeal and make an appropriate adjustment to the applicant's scores, or disagree with the appeal and prepare an appeal file for consideration by the state review committee at its next regularly scheduled meeting. The state review committee will make a final recommendation to the executive director of the Office. The decision of the executive director of the Office is final. If the appeal concerns a TCF application, the appeal must be submitted in writing to the TDA no later than 30 days following the date of the notification letter of the denial. If the appeal concerns a disaster relief fund or urgent need fund application, the appeal must be submitted in writing to the Office no later than 30 days following the date of the notification letter of the denial. If the appeal concerns a small business fund, microenterprise fund, section 108 loan guarantee pilot program, non-border colonia fund, housing fund, colonia fund or Young v. Martinez fund application, the appeal must be submitted in writing to the Office no later than 30 days after the date the announcement of contract awards is published in the *Texas Register*. The staff of either the Office or the TDA, when appropriate, evaluates the appeal and may either concur with the appeal or disagree with the appeal and prepare an appeal file for consideration by the appropriate executive director. The executive director, of the agency with which the appeal was filed, then considers the appeal within 30 days and makes the final decision.

(3) In the event the appeal is sustained and the corrected scores would have resulted in project funding, the application is approved and funded. If the appeal concerning a community development fund or planning/capacity building fund application is rejected, the office notifies the applicant of its decision, including the basis for rejection after the meeting of the state review committee at which the appeal was considered. If the appeal concerns a small business fund, microenterprise fund, section 108 loan guarantee pilot program, non-border colonia fund, Young v. Martinez fund, TCF, housing fund, colonia fund, disaster relief fund, small towns environment program fund, or urgent need fund application, the applicant will be notified of the decision made by the appropriate executive director within ten days after the final determination by the executive director.

(4) Appeals not submitted in accordance with this subsection are dismissed and may not be refiled.

(h) Threshold requirements. An applicant must satisfy each of the following requirements in order to be eligible to apply for or to receive funding under the TxCDBG:

(1) Demonstrate the ability to manage and administer the proposed project, including meeting all proposed benefits outlined in its application. The applicant can meet this threshold by:

(A) Providing the roles and responsibilities of local staff designated to administer or work on the proposed project and a plan for project implementation;

(B) Indicating the intention to use a third-party administrator, if applicable; or

(C) If local staff along with a third-party administrator, will jointly administer the proposed project, by providing the roles and responsibilities of the designated local staff.

(2) Demonstrate the financial management capacity to operate and maintain any improvement made in conjunction with the proposed project. The applicant can meet this threshold by:

(A) Providing the name of the financial person on the applicant's staff, or evidence that the applicant intends to contract services for financial oversight; and

(B) Providing a statement certifying that financial records for the proposed project will be kept at an officially designated city/county site, accessible by the public, and will be adequately managed on a timely basis using generally accepted accounting principles.

(3) Levy a local property tax or local sales tax option.

(4) Demonstrate satisfactory performance on previously awarded TxCDBG contracts. The applicant can meet this threshold by:

(A) Showing past responses, if applicable, to audit and monitoring issues (over the most recent 48 months before the appli-

cation due date) within prescribed times as indicated in the Office's resolution letter(s);

(B) The presence of documentation related to past contracts (over the most recent 48 months before the application due date), through close-out monitoring and reporting, that the activity or service was made available to all intended beneficiaries, that low and moderate income persons were provided access to the service, or there has been adequate resolution of issues regarding beneficiaries served;

(C) The non-presence of any outstanding delinquent response to a written request from the Office regarding a request for repayment of funds to TxCDBG; or

(D) By not having at least one outstanding delinquent response to a written request from the Office regarding compliance issues such as a request for closeout documents or any other required information.

(5) Resolve all outstanding compliance and audit findings related to previously awarded TxCDBG contracts and any other Office contracts. The applicant can meet this threshold if the applicant is actively participating in the resolution of any outstanding audit and/or monitoring issues by responding with substantial progress on outstanding issues within the time specified in the resolution process.

(6) Submit any past due audit to the Office.

(A) A community with one year's delinquent audit may be eligible to submit an application for funding by the established application deadline, but may not receive a contract award if the audit continues to be delinquent on the date the state review committee meets to review funding recommendations for applications from fund categories scheduled for state review committee review. For applications from fund categories that are not reviewed by the state review committee, a community with one year's delinquent audit may be eligible to submit an application for funding by the established application deadline, but may not receive a contract award if the audit continues to be delinquent on the date that the executive director approves funding recommendations, or in the case of funding recommendations over $300,000, on the date that the Executive Committee reviews the funding recommendations. Applications for the colonia self-help center fund and the disaster relief/urgent need fund are exempt from this threshold.

(B) A community with two years of delinquent audits may not apply for additional funding and may not receive a funding recommendation. This applies to all funding categories under the Texas Community Development Program. The colonia self-help centers fund may be exempt from this threshold, since funds for the self-help centers fund is included in the program's state budget appropriation. Failure to meet the threshold will be reported to the Legislative Budget Board for review and recommendation. The disaster relief fund may be exempt from this threshold, but failure to meet this threshold will be forwarded to the Executive Committee for review and consideration.

(7) TxCDBG funds cannot be expended in any county that is designated as eligible for the Texas Water Development Board Economically Distressed Areas Program unless the county has adopted and is enforcing the Model Subdivision Rules established pursuant to §16.343 of the Water Code. An incorporated city that is located in a Texas Water Development Board Economically Distressed Areas Program eligible county that has not adopted, or is not enforcing, the Model Subdivision Rules, may submit an application for TxCDBG funds. However, in lieu of county adoption of the Model Subdivision Rules, the incorporated city must adopt the Model Subdivision Rules prior to the expenditure of any TxCDBG funds by the incorporated city.

(8) Based on a pattern of unsatisfactory performance on previous TxCDBG contracts, unsatisfactory management and administration of previous TxCDBG contracts, or the presence of evidence that an applicant lacks financial management capacity based on a review of official financial records and audits related to previous TxCDBG contracts, the Office or TDA, in the case of the Texas Capital Fund application may determine that an applicant is ineligible to apply for TxCDBG funding even though at the application deadline date it meets the threshold and past performance requirements. The Office or TDA, in the case of the Texas Capital Fund applications will consider an applicant's performance during the most recent 48 months before an application due date to make the eligibility determination. An applicant would still remain eligible for funding under the disaster relief fund.

(i) Unmet benefits. Actions that may be taken against a contractor by the Office where the Office finds that the contractor did not provide the level of benefits specified in its contract include, but are not limited to:

(1) holding the contractor ineligible to apply for TxCDBG funds for a period of two program years or until any issue of restitution is resolved, whichever is longer;

(2) requiring the contractor to reimburse the Office for the difference between the amount of funds provided for the level of benefits specified in the contract and the amount of funds actually expended in providing such level of benefits; and

(3) rescoring the contractor's application, and if the level of benefits actually provided by the contractor would have changed the funding recommendation, terminating the local government's contract.

(j) False information. If an applicant provides false information in its community development fund or planning/capacity building fund application which has the effect of increasing the applicant's competitive advantage, the number of beneficiaries, or the percentage of low to moderate income beneficiaries, the Office refers the matter to the state review committee for disciplinary action. If the applicant provides false information in a small business fund, microenterprise fund, section 108 loan guarantee pilot program, non-border colonia fund, Young v. Martinez fund, colonia fund, disaster relief fund, housing fund, small towns environment program fund, or urgent need fund application, the Office staff shall make a recommendation for action to the executive director of the Office. If the applicant provides false information in a TCF application, TDA staff shall make a recommendation for action to the appropriate executive director. The state review committee makes a recommendation for action to the executive director of the Office at its next regularly scheduled meeting. Documentation of false information must be submitted at least ten business days prior to the next regularly scheduled meeting of the state review committee to be considered at that meeting. Recommendations that the state review committee or executive director may make include, but are not limited to:

(1) Disqualification of the application and holding the locality ineligible to apply for TxCDBG funding for a period of at least one year not to exceed two program years;

(2) holding the applicant or contractor ineligible to apply for TxCDBG funds for a period of two program years or until any issue of restitution is resolved, whichever is longer; and

(3) terminating the local government's contract if the correct information would have changed the scores and resulted in a change in the rankings for purposes of funding.

(k) Substitution of standardized data. Any applicant that chooses to substitute locally generated data for standardized information available to all applicants must use the survey instrument provided by the Office and must follow the procedures prescribed in the instructions to the survey instrument. This option does not apply to applications submitted to the TCF.

(1) Only door-to-door surveys are allowed, unless an alternate method is approved in writing by the Office.

(2) Surveys, including signed tabulation sheets, signed surveys location sheets, all responses, and all non-responses must be submitted to the Office by the application deadline, for verification and spot-checking.

(3) A survey instrument that lacks information prescribed in the instructions to the survey instrument or which includes conflicting information may be considered as a non-response for that family.

(4) The applicant must demonstrate a 100% effort in contacting households to be surveyed and obtain at least an 80% response rate for surveys which include 150 or fewer beneficiary households or obtain at least a 70% response rate for surveys which include 151 or more beneficiary households.

(5) A survey that was completed on or after January 1, 1993, or January 1, 1994, or January 1, 1995, for a previous TxCDBG application may be accepted by the Office for a new application to the extent specified in the most recent application guide for the proposed project.

(l) Unobligated and recaptured funds. Deobligated funds, unobligated funds and program income generated by TCF projects shall be retained for expenditure in accordance with the Consolidated Plan. Program income derived from TCF projects will be used by the Office for eligible TxCDBG activities in accordance with the Consolidated Plan. Any deobligated funds, unobligated funds, program income, and unused funds from the current year's allocation or from previous years' allocations derived from any TxCDBG Fund, including program income recovered from TCF local revolving loan funds, and any reallocated funds which HUD has recaptured from Small Cities may be redistributed among the established current program year fund categories, for otherwise eligible projects. The selection of eligible projects to receive such funds is approved by the Office Executive Director, or when applicable, approved by the Office Executive Committee or by the TDA on a priority needs basis with eligible disaster relief and urgent need projects as the highest priority; followed by, any awards necessary to resolve appeals under fund categories requiring publication of contract awards in the Texas Register, TCF projects, special needs projects, projects in colonias, housing activities, and other projects as determined by the Office Executive Director. Other purposes or initiatives may be established as a priority use of such funds within existing fund categories by the Office Executive Committee. Should the TxCDBG be required to make payments to HUD to cover any loan payments not made by any recipient of a TxCDBG Section 108 loan guarantee, it would first use any available deobligated funds.

(m) Waivers. The Office may waive any provision of this subchapter upon its own motion, or upon an applicant's or contractor's written request for such a waiver if the Office finds that compelling circumstances exist outside the control of the applicant or contractor which justifies the approval of such a waiver. The Office shall not waive any provision hereof concerning the TCF program unless written request to do so is received from the Executive Director of the TDA. The provisions of the foregoing sentence shall not apply to contracts other than those awarded and/or administered by the TDA for the Office. Issues related to audit requirements will be handled by the appropriate agency.

(n) Performance threshold requirements. In addition to the requirements of subsection (h) of this section, an applicant must satisfy the following performance requirements in order to be eligible to apply for program funds. A contract is considered executed for the purposes of this subsection on the date stated in section 2 of such contract.

(1) Obligate at least 50% of the total TxCDBG funds awarded under an open TxCDBG contract within 12 months from the start date of the contract or prior to the application deadlines. This threshold is applicable to TxCDBG contracts with an original 24-month contract period. To meet this threshold, 50% of the TxCDBG funds must be obligated through executed contracts for administrative services, engineering services, acquisition, construction, materials purchase, etc. The TxCDBG contract activities do not have to be 50% completed, nor do 50% of the TxCDBG contract funds have to be expended to meet this threshold. This threshold is applicable to previously awarded TxCDBG contracts under the community development fund, community development supplemental fund, the colonia construction fund, the colonia planning fund, the non-border colonia fund the planning and capacity building fund, and the disaster relief/urgent need fund. This threshold is not applicable to previously awarded TxCDBG contracts under the TCF, the housing infrastructure fund, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program, microenterprise loan fund, small business loan fund, Section 108 loan guarantee pilot program, and the small towns environment program fund. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG disaster relief fund.

(2) Submit to the Office the certificate of expenditures (COE) report showing the expended TxCDBG funds and a final drawdown for any remaining TxCDBG funds as required by the most recent edition of the TxCDBG Project Implementation Manual. Any reserved funds on the COE must be approved in writing by TxCDBG staff. To meet this threshold "expended" means that the construction and services covered by the TxCDBG funds are complete and a drawdown for the TxCDBG funds has been submitted prior to the application deadlines. This threshold will apply to an open TxCDBG contract with an original 24-month contract period and to TxCDBG contractors that have reached the end of the 24-month period prior to the application deadlines. This threshold is applicable to previously awarded TxCDBG contracts under the community development fund, community development supplemental fund, the colonia construction fund, the colonia planning fund, the non-border colonia fund, the planning and capacity building fund, and the disaster relief/urgent need fund. This threshold is not applicable to previously awarded TxCDBG contracts under the TCF, the housing infrastructure fund, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program, microentreprise loan fund, small business loan fund, Section 108 loan guarantee pilot program, and the small towns environment program fund (original 24-month contract extended to 36-months). This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG disaster relief fund.

(3) TCF applicants may not have an existing contract with an award date in excess of 48 months prior to the application deadline date, regardless of extensions granted. If an existing contract requires an extension beyond the initial term, TDA must be in receipt of the request for extension no less than 30 days prior to contract expiration date. If an existing contract expires prior to or on the new application deadline date, without an approved extension, TDA must be in receipt of complete closeout documentation for the existing contract, no less than 30 days prior to the new application deadline date (complete closeout documentation is defined in the most recent version of the TCF Implementation Manual).

(4) Submit to the Office the certificate of expenditures (COE) report showing the expended TxCDBG funds and a final

drawdown for any remaining TxCDBG funds as required by the most recent edition of the TxCDBG Project Implementation Manual. Any reserved funds on the COE must be approved in writing by TxCDBG staff. To meet this threshold "expended" means that the construction and services covered by the TxCDBG funds are complete and a drawdown for the TxCDBG funds has been submitted prior to the application deadlines. This threshold will apply to an open TxCDBG contract with an original 36-month contract period or a small towns environment program 24-month contract, extended to 26 months, and to TxCDBG contractors that have reached the end of the 36-month period prior to the application deadlines. This threshold is applicable to previously awarded TxCDBG contracts under the housing infrastructure fund (when the applicant is applying for the housing infrastructure fund competition) and the small towns environment program fund original 36-month contract or original 24-month contract, extended to 36 months. This threshold is not applicable to previously awarded TxCDBG contracts under the TCF, the housing rehabilitation fund, the colonia self-help centers fund, the colonia economically distressed area program fund, the Young v. Martinez fund, the disaster recovery initiative program the microenterprise loan fund, the small business loan fund, and the section 108 loan guarantee pilot program. This paragraph does not apply to a city or county that meets the eligibility criteria for current assistance from the TxCDBG disaster relief fund.

(o) State review committee. The committee shall consult with and advise the Office's executive director on the administration and enforcement policies of the TxCDBG ; review funding recommendations for applicants under the community development fund, community development supplemental fund, and planning/capacity building fund and assist the Office's executive director in the allocation of program funds to the applicants; review appeals and submit recommendations for the disposition of such appeals to the Office's executive director in accordance with the procedures described in subsection (g) of this section; and report committee actions concerning these tasks to the Office's executive director through the minutes of committee meetings and written reports prepared by Office staff on behalf of the committee.

(p) Minority hiring/participation. It is the policy of the Office to encourage minority employment and participation among all applicants under the TxCDBG. All applicants to the TxCDBG are required to submit information documenting the level of minority participation as part of the application for funding.

(q) Revolving loan funds. A Revolving Loan Fund established through program income recovered from a TxCDBG contract must meet the requirements for Revolving Loan Funds described in the TxCDBG Final Statement, Consolidated Plan or Action Plan for the program year in which the original contract was awarded. Revolving Loan Funds are also subject to appropriate state and federal requirements, TxCDBG contract provisions, and the appropriate Revolving Loan Fund guidelines issued by the Office. The requirement in this section applies to all local Revolving Loan Funds (RLF) established from program income from Texas Capital Fund projects, housing projects and the Small Business Loan Fund. Funds retained in the local RLF must be committed within three years of the original TxCDBG contract programmatic close date. Every award from the RLF must be used to fund the same type of activity, for the same business, from which such income is derived. A local Revolving Loan Fund may retain a cash balance not greater than 33 percent of its total cash and outstanding loan balance. If the local government does not comply with the local RLF requirements, all program income retained in the local RLF and any future program income received from the proceeds of the RLF must be returned to the State.

(r) Withdrawal of award.

(1) Should the applicant fail to substantiate or maintain the claims and statements made in the application upon which the award is based including failure to maintain compliance with application thresholds in subsection (h)(1) - (4) of this section, within a period ending 90 days after the date of the TxCDBG's award letter to the applicant, the award will be immediately withdrawn by the TxCDBG (excluding the colonia self-help center awards).

(2) Should the applicant fail to execute the Office's award contract (excluding Texas Capital Fund and colonia self-help center contracts) within 60 days from the date of the letter transmitting the award contract to the applicant, the award will be withdrawn by the Office.

(s) Funds recaptured from withdrawn awards. For an award that is withdrawn from an application, the Office follows different procedures for the use of those recaptured funds depending on the fund category where the award is withdrawn.

(1) Funds recaptured under the community development fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive an award from the first year regional allocation. Funds recaptured under the community development fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year regional allocation. Any funds remaining from the second year regional allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the region as long as the amount of funds still available exceeds the minimum community development fund grant amount. Any funds remaining from the second year regional allocation that are not accepted by an applicant from the region or that are not offered to an applicant from the region may be used for other TxCDBG fund categories and, if unallocated to another fund, are then subject to the procedures described in subsection (l) of this section.

(2) Funds recaptured under the planning and capacity building fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive an award from the first year allocation. Funds recaptured under the planning and capacity building fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year allocation. Any funds remaining from the second year allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the statewide competition. Any funds remaining from the second year allocation that are not accepted by an applicant from the statewide competition or that are not offered to an applicant from the statewide competition may be used for other TxCDBG fund categories and, if unallocated to another fund, are then subject to the procedures described in subsection (l) of this section.

(3) Funds recaptured under the housing rehabilitation fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to receive an award from the first year allocation. Funds recaptured under the housing rehabilitation fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that statewide competition that was not recommended to

receive full funding (the applicant recommended to receive marginal funding) from the second year allocation. Any funds remaining from the second year allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the statewide competition. Any funds remaining from the second year allocation that are not accepted by an applicant from the statewide competition or that are not offered to an applicant from the statewide competition are then subject to the procedures described in subsection (l) of this section.

(4) Funds recaptured under the colonia construction fund from the withdrawal of an award remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

(5) Funds recaptured under the colonia planning fund from the withdrawal of an award remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

(6) Funds recaptured under the program year allocation for the colonia economically distressed areas program fund from the withdrawal of an award remain available to potential colonia economically distressed areas program fund applicants during that program year. Any funds remaining from the program year allocation that are not used to fund colonia economically distressed areas program fund applications within twelve months after the Office receives the federal letter of credit would remain available to potential colonia program fund applicants during that program year to meet the 10 percent colonia set-aside requirement and, if unallocated within the colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures in subsection (l) of this section.

(7) Funds recaptured under the housing infrastructure fund from the withdrawal of an award are subject to the procedures described in subsection (l) of this section.

(8) Funds recaptured under the program year allocation for the disaster relief/urgent need fund from the withdrawal of an award are subject to the procedures described in subsection (l) of this section.

(9) Funds recaptured under the small towns environment program fund (STEP) from the withdrawal of an award will be made available in the next round of STEP competition following the withdraw date in the same program year. If the withdrawn award had been made in the last of the two competitions in a program year, the funds would go to the next highest scoring applicant in the same STEP competition. If there are no unfunded STEP applicants, then the recaptured funds would be available for other TxCDBG fund categories. Any unallocated STEP funds are subject to the procedures described in subsection (l) of this section.

(10) Funds recaptured under the microenterprise loan fund from the withdrawal of an award are subject to the procedures described in subsection (l) of this section.

(11) Funds recaptured under the small business loan fund from the withdrawal of an award are subject to the procedures described in subsection (l) of this section.

(12) Funds recaptured under the Texas Capital Fund from the withdrawal of an award are subject to the procedures described in subsection (l) of this section.

(13) Funds recaptured under the community development supplemental fund from the withdrawal of an award made from the first year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive an award from the first year regional allocation. Funds recaptured under the community development supplemental fund from the withdrawal of an award made from the second year of the biennial funding are offered to the next highest ranked applicant from that region that was not recommended to receive full funding (the applicant recommended to receive marginal funding) from the second year regional allocation. Any funds remaining from the second year regional allocation after full funding is accepted by the second year marginal applicant are offered to the next highest ranked applicant from the region as long as the amount of funds still available exceeds the minimum community development supplemental fund grant amount. Any funds remaining from the second year regional allocation that are not accepted by an applicant from the region or that are not offered to an applicant from the region may be used for other TxCDBG fund categories and, if unallocated to another fund, are then subject to the procedures described in subsection (l) of this section. This process would also apply to an application under the community development supplemental fund that received a portion of its funds from community development marginal funds. The community development marginal funds would be provided to the replacement application.

(14) For both the community development fund and community development supplemental fund (including applications funded with a portion from each of the two funds), if there are no remaining unfunded eligible applications in the region from the same biennial application period to receive the withdrawn funding, then the withdrawn funds are considered as deobligated funds, subject to the procedures described in subsection (l) of this section.

(15) Funds recaptured under the Non-border Colonia Fund from the withdrawal of an award remain available to potential Non-Border Colonia Fund applicants during that program year and, if unallocated within the non-border colonia fund, may be used for other TxCDBG fund categories. Remaining unallocated funds are then subject to the procedures described in subsection (l) of this section.

(t) Readiness to proceed requirements: In order to determine that the project is ready to proceed, the applicant must provide in its application information that:

(1) Identifies the source of matching funds and provides evidence that the applicant has applied for any non-local matching funds, and for local matching funds, evidence that local matching funds would be available.

(2) Provides written evidence of a ratified, legally binding agreement, contingent upon award, between the applicant and the utility that will operate the project for the continual operation of the utility system as proposed in the application. For utility projects that require the applicant or service provider to obtain a certificate of convenience and necessity for the target area proposed in the application, provides written evidence that the Texas Commission on Environmental Quality has received the applicant or service provider's application.

(3) Where applicable, provide a written commitment from service providers, such as the local water or sewer utility, stating that they will provide the intended services to the project area if the project is constructed.

(u) Performance measures. Each applicant for TxCDBG funds and each city or county receiving a contract award shall provide applicable information requested in application guides, the grant contract, or the most recent edition of the TxCDBG project implementation manual that is required by the Office to report on Community Development

Block Grant program performance measures promulgated by the Executive Committee, the Texas Legislature, and the U.S. Department of Housing and Urban Development.

(v) Street paving activities. Area benefit can be used to qualify street paving activities. However, for street paving activities with multiple and non-contiguous target areas, each target area must separately meet the principally benefit low and moderate income national program objective. At least 51% of the residents located in each non-contiguous target area must be low and moderate income persons. A target area that does not meet this requirement cannot be included in an application for TxCDBG funds. The only exception to this requirement is street paving eligible under the disaster relief fund.

(w) For any award made on or after September 1, 2005, any political subdivision that receives community development block grant program money targeted toward street improvement projects in eligible colonia areas must allocate not less than five percent but not more than 15 percent of the total amount of street improvement money to providing financial assistance to colonias within the political subdivision to enable the installation of adequate street lighting in those colonias if street lighting is absent or needed.

(x) The TxCDBG is under no obligation to approve any changes in a performance statement of a TxCDBG contract that would result in a program year score lower than originally used to make the award if the lower score would have initially caused that project to be denied funding. This does not apply to colonia self-help centers or the Texas Capital Fund.

(y) Any applicant's cash match included in the TxCDBG contract budget may not be obtained from any person or entity that provides contracted professional or construction-related services (other than utility providers) to the applicant to accomplish the purpose described in the TxCDBG contract, in accordance with 24 CFR Part 570.

§255.2. Community Development Fund.

(a) General provisions. This fund covers housing, public facilities, and public service projects. Eligible units of general local government may apply for funding of a single purpose project such as housing assistance, sewer improvements, water improvements, drainage, roads, or community centers, or for a multi-purpose project which consists of any combination of such eligible activities. An application submitted for the community development fund can receive a grant from the community development fund regional allocation and/or from the community development supplemental fund regional allocation.

(1) An applicant may not submit a single jurisdiction application or be a participant in a multi-jurisdiction application under this fund and also submit a single jurisdiction application or be a participant in a multi-jurisdiction application submitted under any other TxCDBG fund category at the same time if the proposed activity under each application is the same or substantially similar. However, an application submitted for the community development fund is also considered for the regional allocation for the community development supplemental fund.

(2) In addition to the threshold requirements of §255.1(h) and (n) of this title, in order to be eligible to apply for community development funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(3) Applicants must demonstrate they are adequately addressing water supply and water conservation issues (in particular contingency plans to address drought-related water supply issues), as described in the application guidance. Applications requesting funds for projects other than water and sewer must include a description of how the applicant's water and sewer needs would be met and the source of funding that would be used to meet these needs.

(b) Funding cycle. This fund is allocated to eligible units of general local government on a biennial basis for the 2007 and 2008 program years pursuant to regional competitions held for the 2007 program year applicants. Applications for funding must be received by the TxCDBG by the dates and times specified in the most recent application guide for this fund.

(c) Allocation plan.

(1) This fund is allocated among the 24 state planning regions established pursuant to Texas Local Government Code, §391.003, by a formula based on the following factors and weights:

(A) number of persons living in poverty--25%

(B) percentage of persons living in poverty--25%

(C) population--30%

(D) number of unemployed persons--10%

(E) unemployment rate--10%

(2) Each state planning region is provided with a 2007 program year community development fund target allocation and an additional 2007 program year community development supplemental fund target allocation and a 2008 program year community development fund target allocation and an additional 2008 program year community development supplemental fund target allocation for applications in the region that are ranked through the 2007 program year regional competitions in accordance with a shared scoring system involving the Office and the regional review committees. The regional allocation formula for the community development supplemental fund is described in §255.15(c) of this title (relating to Community Development Supplemental Fund).

(A) The community development fund regional allocations for the first and second years of the biennial process are awarded first in each region based on the community development fund selection criteria that includes the 700 available points that are awarded by the Office (350 points) and each regional review committee (350 points). Where the remainder of the 2007 program year community development fund target allocation is insufficient to completely fund the next highest ranked applicant, the applicant receives complete funding of the original grant request through either 2007 and 2008 program year funds. Where the remainder of the 2006 program year community development fund target allocation is insufficient to completely fund the next ranked application, the Office works with the affected applicant to determine whether partial funding is feasible. If partial funding is not feasible, the remaining funds from all the target allocations are pooled to fund projects from among the highest ranked, unfunded applications from each of the 24 state planning regions. Selection criteria for such applications will consist of the selection criteria scored by the Office under this fund. Marginal applicants' community distress scores are recomputed based on the applicants competing in the marginal pool competition only.

(B) The remaining applicants in the region that are not recommended to receive awards from the community development fund 2007 and 2008 regional allocations are then ranked to receive the community development supplemental fund regional allocations for the first and second years of the biennial process based on the community development supplemental fund selection criteria that includes the 360 available points that are awarded by the Office (10 points based on the applicant's past performance on previously awarded TxCDBG contracts) and each regional review committee (350 points).

(C) The community development fund marginal funds available from the 2008 regional allocation may be used to fund an application that is recommended to receive only a portion of the original grant request from the community development supplemental fund regional allocation.

(D) If there are insufficient funds available from the first year's community development supplemental fund regional allocation to fully fund an application, then the applicant may accept the amount available or wait for full funding in the second year by combining the regional allocations available for the two years.

(E) If there are insufficient funds available from the 2005 and 2006 community development supplemental fund regional allocations, then any funds available from the 2006 community development fund regional allocation marginal funds may be used to fully fund the application. If marginal funds are not available to fully fund the application, the applicant may accept the amount of the funds available or, if declined, the funds will be part of the marginal competition.

(3) Each regional review committee may allocate approximately 8%, or a greater or lesser percentage, of its community development fund allocation to housing projects proposed in and for that region. Under a housing allocation, the highest ranked applications for housing activities, regardless of the position in the overall ranking, would be selected to the extent permitted by the housing allocation level. If the regional review committee allocates a percentage the region's funds to housing and applications conforming to the maximum and minimum amounts are not received to use the entire housing allocation, the remaining funds may be used for other eligible activities.

(d) Selection procedures.

(1) Prior to the submission deadline specified in the most recent application guide for this fund, each eligible unit of general local government may submit one application to the Office for funding under the combined community development fund and community development supplemental fund regional allocations. Two copies of the application must be submitted. Each applicant must also provide at least one copy of its application to the applicant's regional review committee within three weeks after the Office submission deadline.

(2) Upon receipt of an application, the Office staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding, if ranked. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within 10 calendar days of the date of the staff's notification.

(3) Each regional review committee shall hold a scoring meeting in accordance with the procedures specified in the Office's regional review committee guidebook and in accordance with the procedures and priorities previously established by each regional review committee. Each regional review committee must provide every applicant within its region with an opportunity to make a presentation before the regional review committee. The regional review committee will then score the regional review committee scoring factors.

(4) Following the resolution of any appeals from actions of the regional review committees as specified in §255.8 of this title (relating to Regional Review Committees) the Office adds scores relating to community distress, benefits to low-and moderate-income persons, project impact, other considerations, and match to the regional review committees' scores to determine regional rankings. Scores on the factors in these categories are derived from standardized data from the U.S. Census Bureau, Texas Workforce Commission, and from information provided by the applicant.

(5) Following a final technical review, the Office staff presents the funding recommendations for the 2007 and 2008 community development fund and community development supplemental fund regional allocations to the state review committee. Office staff makes a site visit to each of the applicants recommended for funding prior to the completion of contract agreements.

(6) The funding recommendations of the state review committee are then provided to the executive director of the Office. If the state review committee recommendations differ from the funding recommendations of a regional review committee, the state review committee must provide the affected regional review committee with a written explanation of its determination. The regional review committee may then provide a response to the executive director of the Office. If there is not a consensus between a regional review committee and the state review committee, all review comments by all of the parties involved in the selection process will be forwarded to the executive director of the Office.

(7) The executive director of the Office reviews the 2007 final recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(8) Upon announcement of the 2007 program year contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.

(9) When the 2008 program year TxCDBG allocation becomes available, the executive director of the Office reviews the 2008 program year final recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(10) Upon announcement of the 2006 program year contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.

(e) Selection criteria. The following is an outline of the selection criteria used by the Office and the regional review committees for scoring applications under the community development fund. Seven hundred points are available.

(1) Community distress (total--55 points). All community distress factor scores are based on the population of the applicant. An applicant that has 125% or more of the average of all applicants in its region of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in its region on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in its region on the per capita income factor will receive the maximum number of points available for that factor:

(A) percentage of persons living in poverty--25

(B) per capita income--20

(C) unemployment rate--10

(2) Benefit to low- and moderate-income persons (total--40 points). An application in which at least 60% of the Texas Community Development Block Grant Program funds requested benefit low and moderate income persons receives 40 points.

(3) Project impact (total--175 points).

(A) Each application is scored within a point range based on the application activities. Multi-activity projects which include activities in different scoring ranges will receive a combination score within the possible range. Information submitted in the application or presented to the regional review committees is used by a committee composed of staff of the Office to generate scores on this factor. The point ranges used for project impact scoring are as follows:

(i) water activities, sewer activities, and housing activities (145 to 175 points);

(ii) eligible public facilities in a defense economic readjustment zone (145 to 175 points);

(iii) street paving, drainage, flood control and handicapped accessibility activities (130 to 160 points);

(iv) fire protection, health clinic activities, and facilities providing shelter for persons with special needs (125 to 145 points);

(v) community center, senior citizens center, social services center, demolition/clearance, and code enforcement activities (115 to 135 points);

(vi) gas facilities, electrical facilities, and solid waste disposal activities (110 to 130 points);

(vii) access to basic telecommunications, jail facilities and detention facilities (105 to 125 points);

(viii) all other eligible activities (85 to 115 points).

(B) Other factors that will be evaluated by Office staff in the assignment of project impact scores within the point ranges for activities include, but are not limited to, the following:

(i) each application is scored based on how the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction;

(ii) projects that address basic human needs such as water, sewer, and housing generally are scored higher than projects addressing other eligible activities;

(iii) projects that provide a first-time public facility or service generally receive a higher score than projects providing an expansion or replacement of existing public facilities or services;

(iv) public water and sewer projects that provide a first-time public facility or service generally receive a higher score than other eligible first-time public facility or service projects;

(v) projects designed to bring existing services up to at least the state minimum standards as set by the applicable regulatory agency are given additional consideration;

(vi) For water and sewer projects addressing state regulatory compliance issues, the extent to which the issue was unforeseen;

(vii) projects designed to address drought-related water supply problems are generally given additional consideration;

(viii) water and sewer projects that provide first-time water or sewer service through a privately-owned for-profit utility or an expansion/improvement of the existing water or sewer service provided through a privately-owned for-profit utility may, on a case-by-case basis, receive less consideration than the consideration given to projects providing these services through a public nonprofit organization.

(ix) Projects designed to conserve water usage may be given additional consideration.

(x) Water and sewer projects from applicants that demonstrate a long term commitment to reinvestment in the system and sound management of the system may be given additional consideration (including those that have remained in compliance with health and Texas Commission on Environmental Quality (TCEQ) system requirements).

(xi) Consideration will be given to those water and sewer systems that have agreed to undertake improvements to their systems that TCEQ's recommendation but are not under an enforcement order because of this agreement.

(xii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed.

(xiii) Projects that use renewable energy technology for not less than 10% of the total energy requirements (excluding the purchase of energy from the electric grid that was produced with renewable energy).

(4) Matching Funds (total--60 points). An applicant's matching share may consist of one or more of the following contributions: cash; in-kind services or equipment use; materials or supplies; or land. An applicant's match is considered only if the contributions are used in the same target areas for activities directly related to the activities proposed in its application; if the applicant demonstrates that its matching share has been specifically designated for use in the activities proposed in its application; and if the applicant has used an acceptable and reasonable method of valuation. The population category under which county applications are scored depends on the project type and the beneficiary population served. If the project benefits residents of the entire county, the total population of the county is used. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the residents of the entire unincorporated area of the county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the participating applicants according to the 2000 census. Applications for housing rehabilitation and for affordable new permanent housing for low- and moderate-income persons receive the 60 points without including any matching funds. This exception is for housing activities only. Sewer or water service line/connections are not counted as housing rehabilitation. Demolition/clearance and code enforcement, when done in the same target area are counted as part of the housing rehabilitation activity. When demolition/clearance and code enforcement are proposed without housing rehabilitation activities, then the match score is still based on actual matching funds committed by the applicant. Applications which include additional activities, other than related housing activities, are scored based on the percentage of match provided for the additional activities. Program funds cannot be used to install street/road improvements in areas that are not currently receiving water or sewer service from a public or private service provider

unless the applicant provides matching funds equal to at least 50% of the total construction cost budgeted for the street/road improvements. This requirement will not apply when the applicant provides assurance that the street/road improvements proposed in the application will not be impacted by the possible installation of water or sewer lines in the future because sufficient easements and rights-of-way are available for the installation of such water or sewer lines. The terms used in this paragraph are further defined in the current application guide for this fund.

(A) Applicants with populations equal to or less than 1,500 according to the 2000 census:

(i) match equal to or greater than 5.0% of grant request--60;

(ii) match at least 4.0% but less than 5.0% of grant request--40;

(iii) match at least 3.0% but less than 4.0% of grant request--20;

(iv) match at least 2.0% but less than 3.0% of grant request--10;

(v) match less than 2.0% of grant request--0.

(B) Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census:

(i) match equal to or greater than 10% of grant request--60;

(ii) match at least 7.5% but less than 10% of grant request--40;

(iii) match at least 5.0% but less than 7.5% of grant request--20;

(iv) match at least 2.5% but less than 5.0% of grant request--10;

(v) match less than 2.5% of grant request--0.

(C) Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census:

(i) match equal to or greater than 15% of grant request--60;

(ii) match at least 11.5% but less than 15% of grant request--40;

(iii) match at least 7.5% but less than 11.5% of grant request--20;

(iv) match at least 3.5% but less than 7.5% of grant request--10;

(v) match less than 3.5% of grant request--0.

(D) Applicants with populations over 5,000 according to the 2000 census:

(i) match equal to or greater than 20% of grant request--60;

(ii) match at least 15% but less than 20% of grant request--40;

(iii) match at least 10% but less than 15% of grant request--20;

(iv) match at least 5.0% but less than 10% of grant request--10;

(v) match less than 5.0% of grant request--0.

(5) Other considerations (total--20 points). An applicant receives up to 20 points on the following three factors.

(A) Ten of the 20 points available are awarded to applicants that did not receive a community development fund or a housing rehabilitation fund contract award during the 2005 and 2006 program years.

(B) An applicant receives from zero to ten points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will primarily be based on an assessment of the applicant's performance on the applicant's two most recent TxCDBG contracts that have reached the end of the original contract period stipulated in the contract. TxCDBG staff may also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. An applicant that has never received a TxCDBG grant award will automatically receive these points. TxCDBG staff will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance on TxCDBG contracts after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance will include, but is not necessarily limited to the following:

(i) The applicant's completion of the previous contract activities within the original contract period.

(ii) The applicant's submission of the required close-out documents within the period prescribed for such submission.

(iii) The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs.

(iv) The applicant's timely response to audit findings on previous TxCDBG contracts.

(v) The applicant's submission of all contract reporting requirements such as quarterly progress reports, certificates of expenditures, and project completion reports.

(6) Regional scoring factors (total--350 points). Each regional review committee shall use the following three factors to score applications in its region:

(A) Project priorities. Each regional review committee shall rank and assign points to categories of eligible activities based on the priority of such projects in the region. The first priority shall receive at least 100 points.

(B) Local effort. A minimum of 75 points shall be made available based on definitions and criteria adopted by each regional review committee. The regional review committee must establish the methods its members will use to score this factor, consistent with HUD regulations as determined by TxCDBG.

(C) Merits of the project. A maximum of 175 points shall be awarded based on definitions and criteria adopted by each regional review committee. The regional review committee must establish the methods its members will use to score this factor, consistent with HUD regulations as determined by TxCDBG.

(f) Project impact scoring. Formation submitted in the application and information presented to each Regional Review Committee and the TxCDBG will be used by ORCA staff to generate scores on the Project Impact factor. The maximum Project Impact score is 175 points and an applicant can receive a score as low as 85 points. Scoring ranges have been established for eligible activities. A weighted average is used to assign scores to applications that include activities in

the different Project Impact scoring levels. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for engineering and administration, a percentage of the total TxCDBG construction and acquisition dollars for each activity will be calculated. The percentage of the total TxCDBG construction dollars for each activity will then be multiplied by the appropriate Project Impact point level. The sum of these calculations determines the composite Project Impact score.

(1) Supplemental information may be presented orally to the RRC during the RRC scoring meeting. But any additional information that an applicant wishes to submit for Project Impact scoring consideration, must be submitted in a written/printed format. Additional written/printed information presented to the RRC or the TxCDBG will be accepted up to the date of each RRC scoring meeting. The additional information must be presented to the TxCDBG representative attending the RRC scoring meeting or received in the TxCDBG office by the date of the RRC scoring meeting. Information received by the RRC or the TxCDBG after the date of the RRC scoring meeting will not be considered by the TxCDBG in the scoring of this factor.

(2) The score for water and sewer activities that benefit privately-owned for-profit water and sewer systems will be reduced by five points, except for instances when a Project Impact score is specifically assigned to a water or sewer activity that is provided through a privately-owned for-profit utility.

(3) Water, sewer and housing activities--145 to 175 points.

(A) Water activities.

(i) First-time public water service to an area that includes more than 25 new residential connections--169 points

(ii) Project addressing situation that meets TxCDBG urgent need criteria with back-up letter from the Texas Department of State Health Services or other applicable state agency citing the conditions creating the threat to public health and safety--169 points

(iii) First-time public water service to an area that includes 11 to 25 new residential connections--167 points

(iv) Applicant is addressing deficiencies cited in an active Agreed Order/Enforcement Order with fines included (application must indicate whether cited violation has been resolved)--164 points

(v) Applicant is addressing deficiencies cited in an active Agreed Order/Enforcement Order without fines included (application must indicate whether cited violation has been resolved)--164 points

(vi) First-time public water service to an area that includes 10 or fewer new residential connections--164 points

(vii) Addressing drought conditions through additional water supply or water storage and water system is on the TCEQ drought watch list within the last 4 months prior to the application due date), and the supply problems are not related to substantial water loss from deteriorated lines (must include with the application the notice to citizens and the criteria used to be on the drought list)--161points

(viii) First-time water service to an area through a privately-owned for-profit--161 points

(ix) Water supply/treatment improvements that are still needed to meet state minimum standards cited in the most recent TCEQ water system inspection letter--165 points

(x) Water storage improvements that are still needed to meet state minimum standards cited in the most current TCEQ water system inspection letter--158 points

(xi) Replacing undersized water lines and removing the presence of lead, or contamination that has a regulatory standard to meet state minimum water pressure standards cited in the most recent TCEQ water system inspection letter and the conditions cited still exist--158 points

(xii) Addressing drought conditions by replacing water lines that contribute to a significant loss of water supply; provided the water supply loss is documented by the applicant and the water system is on the current TCEQ drought watch list (within the last 4 months prior to the application due date. Must include with the application the notice to citizens and criteria used to be on the drought list)--157 points

(xiii) Water storage improvements to meet state minimum standards, documented through independent quantifiable information, and the conditions still exist--155 points

(xiv) Water supply/treatment improvements to meet state minimum standards, documented through independent quantifiable information, and the conditions still exist--155 points

(xv) Replacement of water lines with larger diameter water lines to meet minimum state standards for water pressure cited in the most recent TCEQ water system inspection letter, and the conditions cited still exist--155 points

(xvi) Replacement of water lines with larger diameter water lines to meet minimum state standards for water pressure and/or number of connections and documented through independent quantifiable information, and the conditions still exist--153 points

(xvii) Water supply, storage or treatment improvements without independent quantifiable information or a TCEQ water system inspection letter documenting that the activity is addressing state minimum standards--149 points

(xviii) Replacement of water lines with larger diameter water lines to improve service without independent quantifiable information or a TCEQ water system inspection letter documenting that the replacement activity is addressing state minimum standards--148 points

(xix) Replacement of water lines with the same diameter size water lines--147 points

(xx) Water service problems associated with written complaints not addressed elsewhere in this section--146 points

(xxi) Other eligible water activities--145 points

(xxii) Water supply is defined as reservoirs (lakes (surface water), aquifers) or ground storage reservoirs, wells, or an independent wholesale supplier that feeds into treatment facilities (conveyance to plant).

(B) Additional subjective considerations for water activities.

(i) Consideration will be given to those water systems that have agreed to undertake improvements to their systems at TCEQ's recommendation but are not under an enforcement order because of this agreements--1 to five points

(ii) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction. First-time service would score high in the range--1 to 5 points

(iii) Water projects from applicants that demonstrate a long-term commitment to reinvestment in the system and sound management of the system may be given additional consideration (including those that have remained in compliance with health and TCEQ system requirements). Installation of water lines to loop the water system would be considered, however it would not receive points if also scored based on TCEQ enforcement or citations. For water projects addressing state regulatory compliance issues, the extent to which the issue was unforeseen (based on information included in state regulatory documentation or notifications to the applicant) will be considered--1 to 3 points

(iv) Projects designed to conserve water usage may be given additional consideration--2 points if addressing drought conditions and on the TCEQ drought watch list (within the last 3 months prior to the application due date)--1 to 2 points

(v) Projects that use renewable energy technology for not less than 10% of the total energy requirements, (excluding the purchase of energy from the electric grid that was produced with renewable energy)--2 points

(vi) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point)--1 point

(C) Sewer activities.

(i) First-time public sewer service to an area that includes more than 25 new residential connections--169 points

(ii) Project addressing situation that meets TxCDBG urgent need criteria with back-up letter from the Texas Department of State Health Services or other applicable state agency citing the conditions creating the threat to public health and safety--169 points

(iii) Applicant is addressing deficiencies cited in an active Agreed Order/Enforcement Order with fines included--167 points

(iv) First-time public sewer service to an area that includes 11 to 25 new residential connections--167 points

(v) First-time public sewer service to an area that includes 10 or fewer new residential connections--164 points

(vi) Applicant is addressing deficiencies cited in an active Agreed Order/Enforcement Order without fines included--164 points

(vii) Installation of septic tanks or on-site sewer facilities to provide first-time sewer service--162 points

(viii) Applicant is addressing deficiencies cited in the most recent TCEQ sewer system notice of violations letter and the conditions cited still exist--156 points

(ix) First-time sewer service to an area through a privately-owned for-profit utility--161 points

(x) Applicant is expanding the sewer treatment plant in response to the most recent TCEQ letter stating that sewer system has reached 90% of treatment capacity and the conditions cited still exist--161 points

(xi) Applicant is expanding the sewer treatment plant in response to the most recent TCEQ letter stating that sewer system has reached 75% of treatment capacity and the conditions cited still exist--158 points

(xii) Replacing lift stations to address inflow and infiltration problems in response to the most recent TCEQ notice of violations letter citing the problem or documented through independent quantifiable information and the conditions cited still exist--157 points

(xiii) Replacement of sewer lines with new sewer lines to address sewer system overflows, blocked sewer lines, replacement of lift stations with new lift stations to address sewer system unauthorized discharges rather than inflow and infiltration problems or septic tank replacement to address problems based on independent quantifiable information--154 points

(xiv) New sewer treatment plant or expansion of existing sewer treatment plant with independent quantifiable information to provide capacity for first-time sewer services in the same application--164 points

(xv) Replacement of sewer lines with new sewer lines to address sewer system overflows, blocked sewer lines, or inflow and infiltration problems or septic tank replacement to address problems without independent quantifiable information or without a TCEQ letter documenting the problems still exist--150 points

(xvi) Replacement of lift stations with new lift stations without independent quantifiable information or without a TCEQ letter documenting the problems still exist--148 points

(xvii) New sewer treatment plant or expansion of the existing sewer treatment plant without independent quantifiable information or without a TCEQ letter documenting need for the new plant (one point extra if permit has been obtained)--149 points

(xviii) Sewer service problems associated with written complaints not covered elsewhere in this section--146 points

(xix) Other eligible sewer activities--145 points

(xx) New treatment facilities needed to replace failing treatment structure--162 points

(xxi) Installation of approved residential on-site wastewater disposal systems for failing systems that cause health issues--157 points

(xxii) New sewer treatment plant or expansion of the existing sewer treatment plant with independent quantifiable information or with a TCEQ letter documenting the need for the new plant (one point extra if permit is obtained)--157 points

(D) Additional subjective considerations for sewer/wastewater activities.

(i) Consideration will be given to those sewer systems that have agreed to undertake improvements to their systems at TCEQ's recommendation but are not under an enforcement order because of this agreement--1 to 5 points

(ii) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction may be given additional consideration. First-time service would score high in the range--1 to 7 points

(iii) Sewer projects from applicants that demonstrate long-term commitment to reinvestment in the system and sound management of the system may be given additional consideration (including those that have remained in compliance with health and TCEQ system requirements). The applicant would not receive points of this criterion is scored under a category for TCEQ enforcement or citations. For sewer projects addressing state regulatory compliance issues, the extent to which the issue was unforeseen (based on infor-

mation included in state and regulatory documentation or notifications to the applicant) may also be considered--2 points

(iv) Projects that use renewable energy technology for not less than 10% of the total energy requirements, (excluding the purchase of energy from the electric grid that was produced with renewable energy)--2 points

(v) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdiction application can receive a total of one point)--1 point

(E) Housing activities.

(i) Housing rehabilitation addressing all housing code violations and housing guidelines will include preference to making housing units accessible for persons with disabilities--166 points

(ii) Housing rehabilitation addressing all housing code violations that do not include a preference to making housing units accessible for persons with disabilities--164 points

(iii) Construction of new housing, when eligible, for low and moderate income persons--146 points

(iv) Provision of direct assistance (such as down-payment assistance) to facilitate and expand homeownership among persons of low and moderate income--162 points

(v) Acquisition of existing housing units that will be renovated and then made available to low and moderate income persons--161 points

(vi) Housing rehabilitation addressing all housing code violations that include code enforcement and/or demolition clearance activities and housing guidelines will include a preference to making housing units accessible for persons with disabilities--169 points

(vii) Housing rehabilitation that is not addressing all housing code violations and housing guidelines will include preference to making housing units accessible for persons with disabilities--153 points

(viii) Housing rehabilitation that is not addressing all housing code violations--149 points

(ix) Other eligible housing activities--145 points

(F) Additional subjective considerations for housing activities.

(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction--1 to 5 points

(ii) Projects that use renewable energy technology for not less than 10% of the total energy requirements (excluding the purchase of energy from the electric grid that was produced with renewable energy)--1 point

(iii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdiction application can receive a total of one point)--1 point

(4) Eligible public facilities located in a Defense Economic Readjustment Zone--145 to 175 points.

(A) Public facilities projects located in a Defense Economic Readjustment Zone--169 points

(B) Additional subjective consideration for eligible facilities located in a Defense Economic Readjustment Zone.

(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction--1 to 5 points

(ii) Projects that use renewable energy technology for not less than 10% of the total energy requirements (excluding the purchase of energy from the electric grid that was produced with renewable energy)--2 points

(iii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point)--1 point

(5) Street paving, drainage, flood control and handicapped accessibility--130 to 160 points.

(A) Street paving activities.

(i) Installation of road base, asphalt or concrete surface pavement, concrete curb and gutter and storm drainage on existing unpaved streets--155 points

(ii) Installation of road base, asphalt or concrete surface pavement, and drainage structures on existing unpaved streets--153 points

(iii) Construction of new streets that include installation of road base, asphalt or concrete surface pavement, and concrete curb and gutter--155 points

(iv) Installation of road base, asphalt or concrete surface pavement, and roadside ditch improvements on existing unpaved streets--151 points

(v) Construction of new streets that include installation of road base and asphalt or concrete surface pavement--146 points

(vi) Installation of asphalt or concrete surface pavement on existing unpaved streets--144 points

(vii) Reconstruction of existing paved streets--135 points

(viii) Other eligible street paving activities--130 points

(B) Drainage activities.

(i) Installation of designed drainage structures for an area currently using natural terrain for drainage--155 points

(ii) Construction including changes to terrain such as unlined ditches to improve drainage for an area currently using natural terrain for drainage--150 points

(iii) Installation of designed drainage structures to replace existing drainage structures to improve the drainage for an area--145 points

(iv) Reconstruction of unlined ditches to improve drainage for an area--142 points

(v) Clearance of obstructions to unlined ditches or other drainage structures to improve drainage for an area--135 points

(vi) Other eligible drainage activities--130 points

(C) Flood control activities.

(i) Installation of designed flood control structures such as dams or retention ponds--155 points

(ii) Installation of retention walls, creek bed walls, storm sewers, or ditches needed to control flood water--150 points

(iii) Reconstruction of existing flood control structures--145 points

(iv) Clearance of obstructions to flood control structures--135 points

(v) Other eligible flood control activities--130 points

(D) Handicapped accessibility activities.

(i) Addressing all needed improvements to provide complete accessibility to a public building (complete accessibility includes handicapped parking, ramps, handrails, doorway widening, restroom modifications, water fountain modifications, access to upper and lower floors (elevator or lift) and other related improvements)--155 points

(ii) Addressing some of the needed improvements to provide complete accessibility to a public building (complete accessibility includes handicapped parking, ramps, handrails, doorway widening, restroom modifications, water fountain modifications, access to upper and lower floors (elevator or lift) and other related improvements)--145 points

(iii) Other eligible handicapped accessibility activities--130 points

(E) Additional subjective considerations for street paving, drainage, flood control and handicapped accessibility.

(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction--1 to 5 points

(ii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point)--1 point

(6) Fire protection, health clinics, and facilities providing shelter for persons with special needs (hospitals, nursing homes, convalescent homes)--125 to 145 points.

(A) Fire protection activities.

(i) Purchasing fire fighting vehicles, ambulance or EMS vehicle for fire department use--140 points

(ii) Construction of a new fire station and fire fighting vehicles and equipment--135 points

(iii) Purchasing fire fighting equipment for fire department staff--132 points

(iv) Construction of a new fire station only--130 points

(v) Other eligible fire protection activities--125 points

(B) Health clinic activities.

(i) Construction of a new health clinic building--140 points

(ii) Rehabilitation or expansion of an existing health clinic building--135 points

(iii) Purchase of equipment related to existing health clinic structures such as heating and cooling equipment--130 points

(iv) Other eligible health clinic activities--125 points

(C) Facilities providing shelter for persons with special needs (hospitals, nursing homes, convalescent homes).

(i) Construction of a new publicly owned and operated facility--140 points

(ii) Rehabilitation or expansion of an existing facility--135 points

(iii) Purchase of equipment related to the existing facility such as heating and cooling equipment--130 points

(iv) Other eligible facility activities--125 points

(D) Additional subjective considerations for fire protection, health clinics, and facilities providing shelter for persons with special needs.

(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction--1 to 5 points

(ii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point)--1 point

(7) Community centers, senior citizen centers, and social services centers--115 to 135 points.

(A) Community center activities.

(i) Construction of a new community center building that will provide services and recreation activities--130 points

(ii) Construction of a new community center building that will provide only recreation activities--125 points

(iii) Rehabilitation or expansion of an existing community center to increase services or the number of people served--123 points

(iv) Rehabilitation or expansion of an existing community center without any additional services or increase to the number of people served--121 points

(v) Other eligible community center activities--115 points

(B) Senior citizen center activities.

(i) Construction of a new senior center building that will provide services and recreation activities--130 points

(ii) Construction of a new senior center building that will provide only recreation activities--125 points

(iii) Rehabilitation or expansion of an existing senior center building to increase services or the number of people served--123 points

(iv) Rehabilitation or expansion of an existing senior center building without any additional services or increase to the number of people served--121 points

(v) Other eligible senior citizens center activities--115 points

(C) Social service center activities.

(i) Construction of a new building to provide first-time services to an area--130 points

(ii) Rehabilitation or expansion of an existing center building to increase services or the number of people served--125 points

(iii) Rehabilitation or expansion of an center building without any additional services or increase to the number of people served--121 points

(iv) Other eligible social services center activities--115 points

(D) Additional subjective considerations for community centers, senior citizen centers, and social services centers.

(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction--1 to 5 points

(ii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point)--1 point

(8) Demolition/clearance and code enforcement activities--115 to 135 points.

(A) Demolition/clearance activities.

(i) Addressing condemnation activities, eliminating vacant hazardous structures, or eliminating vacant structures used for illegal activities--130 points

(ii) Addressing neighborhood beautification activities--125 points

(iii) Addressing clearance of vacant lots only--117 points

(iv) Other eligible demolition/clearance activities--115 points

(B) Code enforcement activities.

(i) Addressing condemnation activities, eliminating vacant hazardous structures, or eliminating vacant structures used for illegal activities--130 points

(ii) Addressing neighborhood beautification activities--125 points

(iii) Addressing clearance of vacant lots only--117 points

(iv) Other eligible code enforcement activities--115 points

(C) Additional subjective considerations for demolition/clearance and code enforcement activities.

(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction--1 to 5 points

(ii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point)--1 point

(9) Gas facilities, electrical facilities and solid waste disposal activities--110 to 130 points.

(A) Gas facility activities.

(i) Provide first-time gas service to area through a publicly owned and operated utility--125 points

(ii) Provide first-time gas service to area through a privately-owned for-profit utility--120 points

(iii) Replace existing gas lines for a publicly owned and operated utility to improve service--115 points

(iv) Replace existing gas lines for a privately-owned for-profit utility to improve service--112 points

(v) Other eligible gas facility activities--110 points

(B) Electrical facility activities.

(i) Provide first-time electric service to area through a publicly owned and operated utility--125 points

(ii) Provide first-time electric service to area through a privately-owned for-profit utility--120 points

(iii) Replace existing electric lines for a publicly owned and operated utility to improve service--115 points

(iv) Replace existing electric lines for a privately-owned for-profit utility to improve service--112 points

(v) Other eligible electric facility activities--110 points

(C) Solid waste disposal activities.

(i) Activities that include landfill equipment, or transfer station equipment, or site improvements and first-time recycling service--125 points

(ii) Construction of a transfer station with necessary eligible equipment and recycling service--122 points

(iii) Activities that include landfill equipment, or transfer station equipment, or site improvements--119 points

(iv) Acquisition of property for a landfill site or transfer station site and minimal site improvements--115 points

(v) Other eligible solid waste disposal activities--110 points

(D) Additional subjective considerations for gas facilities, electrical facilities and solid waste disposal activities.

(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction--1 to 5 points

(ii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point)--1 point

(10) Access to basic telecommunication activities--105 to 125 points.

(A) Provide first-time access to telecommunications and the internet to an area--120 points

(B) Additional subjective considerations for access to basic telecommunication activities.

(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction--1 to 5 points

(ii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point)--1 point

(11) Jails and detention facility activities--105 to 125 points.

(A) Jail facility activities.

(i) Construction of a new jail--120 points

(ii) Construction of a new police substation in a documented high-crime area--120 points

(iii) Rehabilitation of an existing jail or police substation--110 points

(iv) Other eligible jail facility activities--105 points

(B) Detention facility activities.

(i) Construction of a new juvenile detention facility--120 points

(ii) Construction of a new adult detention facility--118 points

(iii) Rehabilitation of an existing detention facility--110 points

(iv) Other eligible detention facility activities--105 points

(C) Additional subjective considerations for jails and detention facility activities.

(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction--1 to 5 points

(ii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point)--1 point

(12) All other eligible activities--85 to 115 points.

(A) Park activities.

(i) Construction of a first-time park area or expansion of an existing park to include a recreational activity that is not available at any existing park serving the area--110 points

(ii) Improvement to an existing park--100 points

(B) Public service activities. Providing public service that has not been provide by the unit of general local government in the preceding 12 months--110 points

(C) All other eligible activities. All other eligible activities--85 points

(D) Additional subjective considerations for jails and detention facility activities.

(i) How the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction--1 to 5 points

(ii) Projects that consider the Office's Community Viability Index in establishing the issues to be addressed (a single or multi-jurisdictional application can receive a total of one point)--1 point

(13) If the documentation type or terminology differs from what is stated in a particular category but the intent or purpose is the same, the Office may in its discretion use the score for that category rather than assign it to a lower purpose as the document stated in a particular category, the Office may decide to use that category rather than a lower scoring category. The applicant should provide evidence to support such a determination.

(14) The total points awarded may not exceed the maximum point range fro any activity category.

§255.3. Young v. Martinez Fund.

(a) General provisions. Assistance under this fund is limited to the eligible cities selected by the U.S. Department of Housing and Urban Development (HUD) to complete the Court-ordered activities under the Final Order and Decree in the Young v. Martinez litigation. The only eligible activities are the activities described in revised Memoranda of Understanding (MOUs) and any 1990 Desegregation Plan activities cited in the revised MOUs.

(1) A local government with Young v. Martinez required activities must submit an application under this fund which addresses the required activities and which includes local matching funds.

(2) In addition to the threshold requirements of §255.1(h) of this title (relating to General Provisions) and the requirements of §255.1(n) of this title, in order to be eligible to apply for Young v. Martinez funding, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(b) Funding cycle. Recaptured and deobligated funds from prior program years are available to the eligible cities. Applications for funding must be received by the date specified by the TxCDBG.

(c) Selection procedures.

(1) Each eligible local government may submit one application for funding under the Young v. Martinez fund. Two copies of the application must be submitted to the Office and at least one copy of the application must be submitted to the applicant's state planning region.

(2) Upon receipt of an application, the Office staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within ten calendar days of the date of the staff's notification.

(3) Each regional review committee may, at its option, review and comment on an application from a local government within its state planning region. These comments become part of the application file, provided such comments are received by the Office prior to final review of the applications.

(4) HUD reviews the activities included in each application, selects the applications that receive funding, and the order in which the applications receive funding recommendations. HUD then notifies the Office when a funding decision is made.

(5) Following a final technical review, the Office staff makes funding recommendations for the applications selected by HUD to the executive director of the Office.

(6) The executive director of the Office reviews the recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(7) Upon announcement of the contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

§255.4. Planning/Capacity Building Fund.

(a) General provisions. This fund is intended to provide an opportunity for units of general local government to prepare comprehensive community development plans, develop strategies, assess needs, and build or improve local capacity to undertake future community development projects or to prepare other needed planning elements (including telecommunications and broadband needs). All planning projects awarded under this fund must include a section in the final planning document that addresses drought-related water supply contingency plans and water conservations plans. Eligible units of general local government are to be the direct recipients of planning contracts. Units of general local government may submit one application for planning funds annually if all previous planning/capacity building contracts with the Office have been totally reimbursed by the Office.

(1) A cash match equal to or greater than 20% of the total TxCDBG funds requested is required of all applicants having a population over 5,000, a cash match equal to or greater than 15% of the total TxCDBG funds requested is required of all applicants having a population over 3,000 but equal to or less than 5,000, a cash match equal to or greater than 10% of the total TxCDBG funds requested is required of all applicants having a population over 1,500 but equal to or less than 3,000, and a cash match equal to or greater than 5% of the total TxCDBG funds requested is required of all applicants having a population of less than 1,501. The population of an applicant is based on the 2000 census unless an applicant submits a survey conducted in accordance with §255.1(k) of this title (relating to General Provisions). In lieu of providing the cash match specified in this paragraph, and as further described in the most recent application guide for this fund, an applicant may agree to pay out of its own resources for other eligible planning activities described on the matrix included in such application guide.

(2) In addition to the threshold requirements of §255.1(h) and (n) of this title, in order to be eligible to apply for planning/capacity building funding, an applicant under this section must document that at least 51% of the persons in the area who would benefit from the implementation of the proposed planning activity are of low and moderate income.

(b) Funding cycle. This fund is allocated to eligible units of general local government on a biennial basis for the 2007 and 2008 program years pursuant to a statewide competition held during the 2007 program year. Applications for funding from the 2007 and 2008 program year allocations must be received by the TxCDBG by the dates and times specified in the most recent application guide for this fund.

(c) Selection procedures. Scoring and the recommended ranking of projects are done by Office staff with input from the regional review committees. The application and selection procedures consist of the following steps.

(1) Prior to the application deadline, each eligible jurisdiction may submit one application for funding under the planning/capacity building fund. An applicant may not submit an application under this fund and also under the colonia fund if the proposed activity under each application is the same or substantially similar. One copy of the application should be provided to the applicant's regional review committee and two copies must be submitted to the Office.

(2) Upon receipt of an application, the Office staff performs an initial review to determine whether the application is complete and whether the activities proposed are eligible for funding. Results of this initial staff review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within 10 calendar days of the date of the staff's notification.

(3) Each regional review committee may, at its option, review and comment on a planning/capacity building proposal from a jurisdiction within its state planning region. These comments become part of the application file, provided such comments are received by the Office prior to scoring of the applications.

(4) The Office staff generate scores on factors related to planning strategy and products. Each application is scored on how the proposed planning activities resolve the identified community development needs of the local government. This information, as well as any comments made by the regional review committee, are used by the Office staff to generate scores on the planning strategy and products factors.

(5) The Office generates scores on selection criteria relating to community distress, project design, and planning strategy and products. Scores on the factors in these categories are derived from standardized data from the Census Bureau, Texas Workforce Commission, or from information provided by the applicant.

(6) Scores on all factors are totaled to obtain project rankings.

(7) The Office staff submits the 2007 program year and 2008 program year funding recommendations to the state review committee. The state review committee reviews the project rankings and provides funding recommendations to the executive director of the Office.

(8) The executive director of the Office reviews the 2007 program year funding recommendations and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(9) Upon the announcement of the 2007 program year contract awards, the Office staff works with recipients to execute the contract agreements. The award is based on the information provided in the application and on the amount of funding proposed for each contract activity based on the matrix included in the most recent application guide for this fund.

(10) When the 2008 program year TxCDBG allocation becomes available, the executive director of the Office reviews the 2008 program year funding recommendations and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(11) Upon the announcement of the 2006 program year contract awards, the Office staff works with recipients to execute the contract agreements. The award is based on the information provided in the application and on the amount of funding proposed for each contract activity based on the matrix included in the most recent application guide for this fund.

(d) Selection criteria. The following is an outline of the selection criteria used by the Office for selection of the projects under the planning/capacity building fund. Four hundred thirty points are available.

(1) Community distress (total--55 points). All community distress factor scores are based on the total population of the applicant.

(A) Percentage of persons living in poverty--up to 25 points

(B) Per capita income--up to 20 points

(C) Unemployment rate--up to 10 points

(2) Project scope (total--100 points).

(A) Program priority (up to 50 points). An applicant chooses its own priorities under this scoring factor. All activities are weighted at ten points apiece. An applicant receives 50 points for its

first five priorities. Base studies (base mapping, housing, land use, population components) are recommended for those who lack these updated studies. An applicant is not limited to requesting only its first five priorities. It may also request funds for activities viewed as necessary, but no additional points would be available for these activities. Applicants with fewer than five priorities or wishing to accomplish fewer than five activities receive point consideration for efficient use of grant funds under "Planning Strategy and Products" described in the most recent application guide for this fund.

(B) Areawide proposals (up to 50 points). An applicant must propose to conduct all activities described in its application throughout the entire jurisdiction of the applicant to receive the maximum 50 points. An applicant proposing target area planning receives zero points. County applicants with identifiable, unincorporated communities qualify for these points provided that incorporation or other organization of the unincorporated communities is being considered as an option.

(3) Planning strategy and products (total 275 points).

(A) Previous planning (up to 50 points).

(i) An applicant which has not previously received a planning/capacity building contract or an applicant which has received a planning/capacity building fund contract prior to the 1995 program year and has not received any subsequent planning/capacity building fund contracts--up to 50 points.

(ii) An applicant which has received previous planning/capacity building funding and demonstrates that at least three previous planning recommendations have been implemented, i.e., funds from any source have been spent to implement recommendations included in the plans--up to 40 points.

(iii) An applicant which has participated in the program established under this section and demonstrates implementation of some of the planning recommendations, regardless of the source of funding, or an applicant which has received previous planning/capacity building funding but demonstrates that conditions have changed to warrant new planning for the same activities--up to 20 points.

(iv) Previous recipients of Planning and Capacity Building Funds since program year 1995 scored under clauses (ii) and (iii) of this subparagraph that have not implemented the previously funded activities, and there are no special or extenuating circumstances prohibiting implementation, will not receive points under the Previous planning category. Implementation must be completely documented in the original submission of the application and its questionnaire. Further documentation will not be requested prior to scoring consideration.

(B) Proposed planning effort (225 points). The factors considered by staff of the Office in determining this score are as follows:

(i) Community Needs Assessment (up to 10 points) Application must have the following for points:

(I) Needs clearly identified by priority; and

(II) Evidence of strong citizen input or known citizen involvement;

(ii) Evidence of effort to notify special groups included with the originally submitted application (up to 5 points);

(iii) Good hearings' notices, timeliness and/or participation. Hearing notices and publication happened as described in the application guide (up to 10 points);

(iv) How clearly the proposed planning effort results in a strategy to resolve the identified needs (up to 15 points);

(v) Whether the proposed activities will result in development of a viable strategy that can be implemented and would be an efficient use of grant funds (up to 15 points);

(vi) Anticipated actions are clear, concise and reasonable (i.e., applicant has responded properly) and anticipated actions match needs (up to 10 points) (Must have both items to receive these points);

(vii) Community is organized and would ensure a planning process or plan implementation (as evidenced by advisory committee, main street designation, previous good performance, etc.) (up to 5 points);

(viii) Applicant's resolution specifically names activities for which it is applying (up to 5 points);

(ix) Applicant is applying for planning only; no construction activities proposed for the 2007 - 2008 TxCDBG (up to 3 points);

(x) Table 1, Description of Planning Activity, in application (up to 15 points) (Must have all items to receive points):

(I) Originally submitted application describes eligible activities;

(II) Originally submitted application describes understanding of plan process;

(III) Originally submitted application addresses identified needs;

(IV) Originally submitted application appears to result in solution to problems; and

(V) Originally submitted application describes or indicates an implementable strategy;

(xi) Table 1, Description of Planning Activity, in application: (total 10 points):

(I) Original application requests recommended base planning activities (up to 5 points); and

(II) Original application documents independent effort in base planning (up to 5 points);

(xii) Table 2, Benefit to low/moderate income persons (up to 10 points) (Must have all items, if applicable, for points):

(I) Amount requested in original submission is less than or equal to matrix prescribed amount;

(II) If special activity funding is requested, the amount appears to be reasonable; and

(III) All proposed activities in original application relate to described needs and resolution.

(xiii) Community based questionnaire (up to 5 points) (Must have both for points):

(I) Original was complete; no pages missing; no more than one to three blanks; no disparities, and

(II) Considering the applicant's size, the form indicates an attempt to control problems;

(xiv) Staff Capacity--Applicant has demonstrated staff capacity (up to 3 points);

(xv) Organization for Planning (to 5 points total)--One of the following exist within the applicant's jurisdiction: Planning and Zoning Commission, Planning Commission, Zoning Commission, Zoning Board of Adjustment, Citizens Advisory Committee, or other local group involved;

(xvi) One organization for planning meets six or more times per year (5 points);

(xvii) Applicant has at least three of the following codes or ordinances passed since 1983, according to the original application (3 points): Zoning, Building, Subdivision, Gas-Natural, Electrical, Fire, Plumbing;

(xviii) Adjustments (Subtract up to 6 points): Applicant has zoning and no land use and future land use maps and requests no base studies (subtract 3 points); and zoning passed before land use plan accomplished and no indication to do land use and/or no zoning requested (subtract 3 points);

(xix) Applicant has at least two of the following codes or ordinances passed since 1980, according to the original application Mobile Home, Minimum Standards-Housing, Flood Plain, Dangerous Structures, and Fair Housing (up to 5 points);

(xx) Applicant has at least 3 of the following element(s) that are less than 10 years old according to the application or will have in place the following element(s) prior to awards (up to 5 points maximum; but no points if reapplying for TxCDBG funding for same activities accomplished since 1995): Land Use, Water System, Housing, Wastewater, Street Plan, Drainage, Economic Development Plan, Solid Waste, Central Business District Plan, Capital Improvement Program, or Recreation/Parks;

(xxi) Applicant has both a property and sales tax (up to 5 points);

(xxii) Applicant has been successful in collecting an average of 95% or more of its property taxes for the two years--2002 and 2003 (per application) (up to 3 points);

(xxiii) Applicant reports it has an active code enforcement program (up to 2 points);

(xxiv) The population change (up to a total of 10 points). The population change either positive or negative from 1990 to present is between 5% and 10% (up to 2 points); greater than 10% but less or equal to 15% (up to 4 points); greater than 15% but less or equal to 20% (up to 6 points); greater than 20% but less or equal to 25% (up to 8 points); or greater than 25% (up to 10 points);

(xxv) Applicant reports it has passed a one-half cent sales tax to fund economic development activities (3 points);

(xxvi) Applicant has performed activities to attract or retain business and industry (other than passing the 1/2 cent sales tax) (up to 3 points);

(xxvii) Applicant has applied for federal or state funds (other than TxCDBG) in the last three years or is currently applying (up to 3 points);

(xxviii) Applicant is specifically requesting funding for a Capital Improvement Program in proper implementation sequence or has indicated in the application that a capital improvement programming process is routinely accomplished (up to 3 points);

(xxix) Applicant's responses to questions on the Community Base Questionnaire and/or other portions of the application appear to indicate that the applicant will produce a valid Capital Improvement Program that would draw on local resources and grant/loan programs other than TxCDBG (3 points);

(xxx) Applicant is in a Council of Government region which had no recipients of any kind of TxCDBG planning funds during the previous biennial program years (up to 8 points);

(xxxi) Applicant is requesting fewer than five priority activities and is requesting no more than the dollar amount prescribed in the matrix and no Special Activities requested or applicant is requesting only Special Activities and it is apparent that they are urgently needed from the application (up to 10 points);

(xxxii) Applicant is again requesting planning funds according to the matrix after competing unsuccessfully last competition, according to the Summary Form; or Applicant has a population shown on Table 2 of the application of at least 200 but less than or equal to 500 (up to 5 points);

(xxxiii) Commitment, as exhibited by match, based on 2000 Census (up to 5 points). Applicant is contributing the following percentage more than required over the base match amount for its population level:

(I) less than 5% (0 points);

(II) 5% but less than 10% more than required (2 points);

(III) 10% but less than 15% more than required (3 points);

(IV) 15% but less than 20 more than required (4 points); or

(V) At least 20% more than required (5 points);

(xxxiv) Applicant includes at least three sound indications of the locality's likelihood to stay directly involved in the planning process and to implement the proposed planning (up to 3 points);

(xxxv) Special Impact. Whether some significant event will occur in the region that may impact ability to provide services, such as a factory locating in the area that will increase jobs by 10 percent, the announced closure of an employer that will reduce jobs by 10 percent, declared natural disaster, or announcement of construction of a major interstate highway in the area (up to 5 points);

(xxxvi) Applicant's past performance. Past performance on previous TxCDBG contracts (up to 5 points); and

(xxxvii) Applicant has never received a TxCDBG grant and the application would lead one to believe that the project will be completed successfully and the plans implemented (up to 5 points).

§255.5. Disaster Relief Fund.

(a) General provisions. Assistance under this fund is available to units of general local government for eligible activities under the Housing and Community Development Act of 1974, Title I, as amended, for the alleviation of a disaster situation. To receive assistance under this program category, the situation to be addressed with TxCDBG funds must be both unanticipated and beyond the control of the local government. For example, the collapse of a municipal water distribution system due to lack of regular maintenance does not qualify. If the same situation was caused by a tornado or flood, the community could apply for disaster relief funds. An applicant may not apply for funding to construct public facilities that did not exist prior to the occurrence of the disaster. Starting with the 2004 TxCDBG program year, TxCDBG disaster relief funds will not be provided under the Federal Emergency Management Agency's Hazard Mitigation Grant Program unless the Office receives satisfactory evidence that any property to be

purchased was not constructed or purchased by the current owner after the property site location was officially mapped and included in a designated flood plain area. Additionally, in disaster relief situations, the TxCDBG dollars are to be viewed as gap financing or funds of last resort. In other words, the community may only apply to the Office for funding of those activities for which local funds are not available, i.e., the entity has less than six months of unencumbered general operations funds available in its balance as evidenced by the last available audit as required by state statute, or assistance from other sources is not available. TxCDBG will consider whether funds under an existing TxCDBG contract are available to be reallocated to address the situation. TxCDBG may prioritize throughout the program year the use of Disaster Relief assistance funds based on the type of assistance or activity under considerations and may allocate funding throughout the program year based on assistance categories. Assistance under the disaster relief fund is provided only if one of the following has occurred:

(1) The governor has requested a presidential declaration of a major disaster; or

(2) The governor has declared a state of disaster or emergency.

(b) Funding cycle. Funds for disaster relief projects will be awarded throughout the program year in response to disaster situations. The application for assistance must be submitted no later than 12 months from the date of the presidential declaration of a major disaster or governor's declaration of a state of disaster or emergency.

(c) Selection procedures. As soon as an area qualifies for disaster relief assistance, the Office works with the local government, the governor's office, and the Emergency Management Division of the Texas Department of Public Safety to determine where TxCDBG funds can best be utilized. The Office then works with the unit of local government selected for funding to negotiate a contract. A unit of general local government cannot receive a disaster relief grant and an urgent need grant to address problems caused by the same natural disaster situation. In no instance will a unit of general local government receive more than one disaster relief grant to address a single occurrence of a natural disaster.

(d) Disaster recovery initiative funds. Disaster recovery initiative funds are available to eligible counties, cities, and Indian tribes to address damages from severe rain storms and flooding. Any damages sustained in the eligible county areas that were sustained from storm or flood conditions that occurred before or after the dates designated in disaster recovery initiative notices for funding are not eligible for assistance. Disaster recovery initiative funds may supplement, but not replace, resources received from other Federal or State agencies to address the damages from the storm and flood conditions. These funds cannot be used for activities that were reimbursable by or for which funds were made available from the Federal Emergency Management Agency, the Small Business Administration, the National Resource Conservation Service, or the U.S. Army Corps of Engineers.

(e) Eligible applicants for disaster recovery initiative funds. Eligible applicants for these funds are nonentitlement and entitlement counties, incorporated cities, or eligible Indian tribes located in one of the counties named in disaster recovery initiative notices for funding that are preceded by Presidential Disaster Declarations for counties in Texas that sustained damages from severe storms and flooding.

(f) Eligible disaster recovery initiative activities. Since the eligible activities may vary in each disaster recovery initiative notice for funding, eligible applicants are informed of the eligible activities in each application guide for disaster recovery initiative assistance.

(g) Disaster recovery initiative funding cycle. An application for these funds can be submitted on an as-needed basis. An eligible applicant can only submit one application for these funds. Based on the disaster recovery initiative selection criteria, applications selected to receive funding may not necessarily be selected on a first-come, first-served basis.

(h) Disaster recovery initiative selection criteria. The following describes the evaluation criteria used by the Office to select disaster recovery initiative grantees.

(1) Priority for the use of these funds will be given to applications where all or some of the application activities meet the national program objective of principally benefiting low and moderate income persons. To meet this national program objective at least 51% of the beneficiaries for an application activity must be low and moderate income persons.

(2) Priority for these funds will be given to eligible applicants that have not already received a TxCDBG disaster relief grant for activities associated with the occurrence of this disaster.

(3) For any application that includes construction or acquisition activities, the Office will consider the applicant's status as a nonparticipating, noncompliant community under the National Flood Insurance Program when prioritizing the selection of the applicants that will receive disaster recovery initiative funds.

§255.6. Urgent Need Fund.

(a) General provisions. Urgent need assistance is contingent upon the availability of funds for activities that will restore water or sewer infrastructure whose sudden failure has resulted in either death, illness, injury, or pose an imminent threat to life or health within the affected applicant's jurisdiction. The infrastructure failure must not be the result of a lack of maintenance and must be unforeseeable. As an initial step, TxCDBG undertakes an assessment of whether the situation is reasonably considered unforeseeable. An application for urgent need assistance will not be accepted by the TxCDBG until discussions between the potential applicant and representatives of the TxCDBG, the Texas Commission on Environmental Quality (TCEQ), and the Texas Water Development Board (TWDB) have taken place. Through these discussions, a determination shall be made whether the situation meets TxCDBG urgent need threshold criteria; whether shared financing is possible; whether financing for the necessary improvements is, or is not, available from the TWDB; or that the potential applicant does, or does not, qualify for TWDB assistance.

(b) Threshold requirements. In addition to the threshold requirements set forth in §255.1(h) and (n) of this title (relating to General Provisions), each of the following requirements must be satisfied in order to be eligible for funding under this fund:

(1) The situation addressed by the applicant must not be related to a proclaimed state disaster declaration or a federal disaster declaration.

(2) The situation addressed by the applicant must be both unanticipated and beyond the control of the local government.

(3) The problem being addressed must be of recent origin. For urgent need assistance, this means that the situation first occurred or was first discovered no more than 30 days prior to the date that the potential applicant provides a written request to the TxCDBG for urgent need assistance. The urgent need fund will not fund projects to address a situation that has been known for more than 30 days or should have been known would occur based on the applicants existing system facilities.

(4) Each applicant for these funds must demonstrate that local funds or funds from other state or federal sources are not available to completely address the problem.

(5) The distribution of these funds will be coordinated with other state agencies.

(6) The infrastructure failure cannot have resulted from a lack of maintenance.

(7) Urgent need funds cannot be used to restore infrastructure that has been cited previously for failure to meet minimum state standards.

(8) The infrastructure failure cannot have been caused by operator error.

(9) The infrastructure requested by the applicant cannot include back-up or redundant systems.

(10) TxCDBG will consider whether funds under an existing TxCDBG contract are available to be reallocated to address the situation.

(11) The urgent need fund will not finance temporary solutions to the problem or circumstance.

(c) Start of construction. Construction on an urgent need fund project must begin within ninety (90) days from the start date of the TxCDBG contract. The TxCDBG reserves the right to deobligate the funds under an urgent need fund contract if the grantee fails to meet this requirement.

(d) Matching funds. Each applicant for urgent need funds must provide matching funds. If the applicant's 2000 census population is equal to or fewer than 1,500 persons, the applicant must provide matching funds equal to 10 percent of the TxCDBG funds requested. If the applicant's 2000 census population is over 1,500 persons, the applicant must provide matching funds equal to 20 percent of the TxCDBG funds requested. For county applications where the beneficiaries of the water or sewer improvements are located in unincorporated areas, the population category for matching funds is based on the number of project beneficiaries.

§255.7. Texas Capital Fund.

(a) General Provisions. This fund covers projects which will result in either an increase in new, permanent employment within a community or retention of existing permanent employment. Under the main street improvements and downtown revitalization programs, projects must qualify to meet the national program objective of aiding in the prevention or elimination of slum or blighted areas.

(1) For an activity that creates/retains jobs, the city/county and business must document that at least 51% of the jobs are or will be held by low and moderate income persons. For purposes of determining whether a job is or will be held by a low or moderate income person or not, the following options are available.

(A) The business must survey all persons filling a created/retained job. Persons filling a created job should be surveyed at the time of employment. Persons holding a retained job should be surveyed prior to application submission. This determination is based on the family's size and previous 12 month income and is normally documented on the Family Income/Size Certification form, which is filled out, dated and signed by employees; or

(B) The person(s) employed by the business for created/retained jobs may be presumed to be a low or moderate income person if the person resides within a census tract or block numbering area that either is part of a Federally-designated Empowerment Zone or Enterprise Community or the person(s) reside in a census tract or block numbering area that meets the following criteria:

(i) The census tract or block numbering area has a poverty rate of at least 20% as determined by the most recently available decennial census information;

(ii) The census tract or block numbering area does not include any portion of a central business district, as this term is used in the most recent Census of Retail Trade, unless the tract has a poverty rate of at least 30% as determined by the most recently available decennial census information; and

(iii) The census tract or block numbering area shows evidence of pervasive poverty and general distress by meeting at least one of the following standards:

(I) All block groups in the census tract have poverty rates of at least 20%; or

(II) The specific activity being undertaken is located in a block group that has a poverty rate of at least 20%; or

(III) Has at least 70% of its residents who are low- and moderate-income persons; or

(IV) The assisted business is located within a census tract or block numbering area that meets the requirements of this subparagraph, and the job under consideration is to be located within that census tract or block numbering area.

(2) If the project is designed to aid in the prevention or elimination of slum or blighted areas, then it must meet the area slum or blight or spot slum or blight criteria and threshold requirements outlined in the separate main street or downtown revitalization program applications.

(3) A firm financial commitment from all funding sources.

(4) The leverage ratio between all funding sources to the Texas Capital Fund (TCF) request may not be less than 1:1 for awards of $750,000 or less; and 4:1 for awards of $750,000 to $1,000,000. The main street and downtown revitalization programs require a minimum 0.1:1 match.

(5) In order for an applicant to be eligible, the cost per job calculation must not exceed $25,000 for awards of $750,000 or less; and $10,000 for awards of $750,001 to $1,000,000. These requirements do not apply to the main street program or the downtown revitalization program.

(6) No financial assistance will be provided to projects involved in the relocation of any industrial or commercial plant, facility or operation, from one state to another state, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs. No assistance will be provided for projects intended to facilitate the relocation of any industrial or commercial plant, facility or operation from one unit of general local government within Texas to another unit of general local government within Texas unless a 10% net gain of jobs will occur and one of the following requirements has been met prior to submitting an application for consideration under this section:

(A) Business to relocate with approval of current locality. Local government must provide written documentation within the application, verifying the chief elected official (mayor or judge) of the unit of local government from which the business is relocating supports and approves the relocation proposal. A written agreement between the two local governments involved in the business relocation is preferred.

(B) Local government notification with no response. Local government must provide written documentation that a letter has been mailed (by registered mail) to the local government from which the business is relocating, notifying it of the relocation. The local government, upon receipt of the notification, then has 30 days to object to the relocation, in writing, to the TDA before the TCF application can be considered. A written objection to a relocation from a local government will prevent the application from being considered.

(7) The TDA will not consider any application for funding which will result in the provision of assistance for an economic development project where the applicant and one or more other cities or counties are competing to provide economic development project funds to that project.

(8) The TDA will not consider any application for funding in which the business or principals to be assisted thereunder, or a business that shares common principals has filed under the Federal Bankruptcy Code, and the matter is in the process of being adjudicated or in which such business has been adjudicated bankrupt. On a case by case basis, extenuating circumstances will be evaluated.

(9) The TDA may consider applications in the real estate and infrastructure improvement programs that provide funding to benefit a maximum of three (3) businesses.

(10) The TDA will consider a project proposed by a city that is in the city's corporate limits or its extraterritorial jurisdiction, and will consider a project proposed by a county that is in the unincorporated area of the county. Counties may not sponsor an application for a business located in a city, if that business is currently participating in a TCF project with that city. TDA may consider providing funding for an economic development project proposed by a city that is outside the city's corporate limits or extraterritorial jurisdiction, but within the county or contiguous counties (not to exceed five (5) miles beyond the city's extra-territorial jurisdiction that the city is located in and will consider a project proposed by a county that is within an incorporated city, if the applicant demonstrates that the project is appropriate to meet its needs, if the applicant has the legal authority to engage in such a project and if at least fifty-one percent (51%) of the principal beneficiaries reside within the applicant's jurisdiction.

(11) A TCF contractor must satisfactorily close out a contract in support of a specific business, downtown revitalization project, or main street project in order to be eligible to receive additional funds under the TCF for the same business, downtown project, or main street city. The contractor is eligible for an additional TCF award in support of a specific business, provided that the prerequisite program income choice has been selected, if the assisted business is not in the designated main street or downtown business district geographic area and the assisted business will create or retain jobs to meet the national program objective.

(12) The TDA will not consider or accept an application for funding from a community, in support of a business project that is currently receiving TCF assistance through that same community.

(13) The minimum and maximum award amount that may be requested/awarded for a project funded under the TCF infrastructure or real estate development programs, regardless of whether the application is submitted by a single applicant or jointly by two or more eligible jurisdictions is addressed here. Award amounts are directly related to the number of jobs to be created/retained and the level of matching funds in a project. Projects that will result in a significantly increased level of jobs created/retained and a significant increase in the matching capital expenditures may be eligible for a higher award amount, commonly referred to as jumbo awards. TCF monies are not specifically reserved for projects that could receive the increased maximum award amount, however, jumbo awards may not exceed $2 million in total awards during the program year. Additionally, no more than $1 million in jumbo awards will be approved in any round. The maximum amount for a jumbo award is $1 million and the minimum award amount is $750,100. The maximum amount for a normal award is $750,000 and the minimum award amount is $50,000. These amounts are the maximum funding levels. The program can fund only the actual, allowable, and reasonable costs of the proposed project, and may not exceed these amounts. All projects awarded under the TCF program are subject to final negotiation between TDA and the applicant regarding the final award amount, but at no time will the award exceed the amount originally requested in the application.

(14) TDA will allocate the available funds for the year, less $600,000 for the main street program, and $1,200,000 for the downtown revitalization program, as follows:

(A) First round. 30% of the annual allocation plus any deobligated and program income funds available, as of the application due date.

(B) Second round. 40% of the remaining allocation plus any deobligated and program income funds available, as of the application due date.

(C) Third round. 50% of the remaining allocation plus any deobligated and program income funds available, as of the application due date. If only three application rounds are scheduled, all remaining funds will be allocated to the final round.

(D) Fourth round. Any remaining allocation plus any deobligated and program income funds available, as of the application due date.

(b) Overview. This fund is distributed to eligible units of general local government for eligible activities in the following program areas:

(1) The infrastructure program. The infrastructure program provides funds for eligible activities such as the construction or improvement of water/wastewater facilities, public roads, natural gas-line main, electric-power services, and railroad spurs.

(2) The real estate program. The real estate program provides funds to purchase, construct, or rehabilitate real estate that is wholly or partially owned by the community and leased to a specific benefiting business (either a for-profit entity or a non-profit entity).

(3) The main street program. The main street improvements program provides public improvements in support of Texas main street program designated municipalities.

(4) The downtown revitalization program. The downtown revitalization program provides public improvements to a city's historic main business district.

(c) Application Dates. The TCF (except for the main street program and the downtown revitalization program) is available up to four times during the year, on a competitive basis, to eligible applicants statewide. Applications for the main street program and the downtown revitalization program are accepted annually. Applications will not be accepted after 5:00 p.m. on the final day of submission. The application deadline dates are included in the program guidelines.

(d) Repayment Requirements. TCF awards for real estate improvements and private infrastructure require repayment. Infrastructure payments and real estate lease payments are intended to be paid by the benefiting business to the applicant/contractor and constitute program income. The repayment is structured as follows:

(1) Real estate improvements. These improvements are intended to be owned by the applicant and leased to the business. Real estate improvements require full repayment. At a minimum, the lease agreement with the business must be for a minimum three year period or until the TCF contract between the applicant and TDA has been satisfactorily closed (whichever is longer). A minimum monthly lease payment will be required to be collected from the original business and any subsequent business which occupies the real estate funded by the TCF, which equates to the principal funded by the TCF divided over a maximum 20 year period (240 months), or until the entire principal has been recaptured. The repayment term is determined by TDA and may not be for the maximum of 20 years for smaller award amounts. There is no interest expense associated with an award. Payments begin the first day of the third month following the construction completion date or acquisition date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount. After the contract between the applicant and the Department is satisfactorily closed, the applicant will be responsible for continuing to collect the minimum lease payments only if a business (any business) occupies the real estate. The lease agreement may contain a purchase option, if the option is effective after a minimum five year ownership requirement and if the purchase price equals (at a minimum) the remaining principal amount originally funded by the TCF which has not been recaptured.

(2) Infrastructure improvements.

(A) Private Infrastructure is infrastructure that will be located on the business's site or on adjacent and/or contiguous property, to the site, that is owned by the business, principals, or related entities. All funds for private infrastructure improvements require full repayment. Terms for repayment will be interest free, with repayment not to exceed 20 years and are intended to be repaid by the business through a repayment agreement. Payments begin the first day of the third month following the construction completion date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount.

(B) Public Infrastructure is infrastructure located on public property or right-of-ways and easements granted by entities unrelated to the business or its owners and not included or identified as private infrastructure. All funds for public infrastructure do not require repayment.

(C) Rail improvements on private property require full repayment. Terms for repayment will be no interest, with repayment not to exceed 20 years and are intended to be repaid by the business through a repayment agreement. Payments begin the first day of the third month following the construction completion date. Payments received 15 calendar days or more late will be assessed a late charge/fee of 5% of the payment amount.

(e) Application process for the infrastructure and real estate programs. The TDA will only accept applications during the months identified in the program guidelines. Applications are reviewed after they have been competitively scored. Staff makes recommendation for award to the TDA Commissioner. The TDA Commissioner makes the final decision. The application and selection procedures consist of the following steps:

(1) Each applicant must submit a complete application to TDA's Rural Economic Development Division. No changes to the application will be allowed after the application deadline date, unless they are a result of TDA staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.

(2) Upon receipt of applications, TDA staff reviews scores for validity and ranks them in descending order.

(3) TDA staff will review the applications for eligibility and completeness in descending order based on the scoring. The applicant will be given 10 business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature will be determined incomplete and returned. In the event staff determines that an application contains activities that are ineligible for funding, the application will be restructured or returned to the applicant. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDA staff then conducts a review of each complete application to make threshold determinations with respect to:

(A) The financial feasibility of the business to be assisted based on a credit analysis;

(B) The strength of commitments from all other public and/or private investments identified in the application;

(C) Whether the use of TCF is appropriate to carry out the project proposed in the application;

(D) Whether efforts have been made to maximize other financial resources;

(E) Whether there is evidence that the permanent jobs created or retained will primarily benefit low-and-moderate income persons; and

(F) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TxCDBG funds.

(5) Upon TDA staff determination that an application supports a feasible and eligible project, staff normally will schedule a visit to the applicant jurisdiction to discuss the project and program rules with the chief elected official (or designee), business representative(s), and to visit the project site.

(6) TDA staff prepares a project report with recommendations (for approval or denial) to TDA's Commissioner.

(7) The TDA Commissioner reviews the recommendation and announces the final decision.

(8) TDA staff works with the recipient to execute the contract agreement. While the contract award must be based on the information provided in the application, TDA staff may negotiate some elements of the final contract agreement with the recipient.

(9) The contract is drafted and then reviewed by management and legal prior to two copies being mailed to award recipient. Upon receipt, the award recipient has 30 days to review and execute both copies. Once returned to TDA, the contract will be fully executed by the TDA Commissioner and then a single copy is returned to contractor.

(f) Scoring criteria for the infrastructure and real estate programs. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility in descending order based on the scoring criteria. There are a total of 100 points possible.

(1) In the event of a tie score and insufficient funds to approve all applications, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on county poverty rate. Thus, preference is given to the applicant with the higher poverty rate.

(B) If a tie still exists after applying the first criteria then applications are ranked from lowest to highest based on county unemployment rate. Thus, preference is then given to the applicant with the higher unemployment rate.

(2) Community Need (maximum 60 points). Measures the economic distress of the applicant community.

(A) Unemployment (maximum 10 points). Five points awarded if the applicant's quarterly county unemployment rate (the most recently available 3 months will be used) is higher than the state rate, indicating that the community is economically below the state average. Ten points awarded if the applicant's most recently available quarterly county unemployment rate is 1.5% over the state rate.

(B) Poverty (maximum 15 points). Awarded if the applicant's most recently available annual county poverty rate, as provided in Appendix A of the Application, is higher than the annual state rate, indicating that the community is economically below the state average. Applicants will score 5 points if their rate meets or exceeds the state average; score 10 points if this figure exceeds the state average by at least 15%; and score 15 points if this figure exceeds the state average by at least 25%.

(C) Enterprise/Empowerment/Defense Zone (maximum 5 points). A project located in a state designated enterprise zone, federal enterprise community, federal empowerment zone, or defense zone receives these five points.

(D) Previous Contracts (Maximum 10 points). Award 5 points if the community has been awarded one contract in the current calendar year or preceding 2 calendar years. Award 10 points if the community has been awarded zero contracts in the current calendar year or the preceding 2 calendar years.

(E) Community Population (maximum 10 points). Points are awarded to applying cities with populations of 5,050 or less and counties with a total population of 35,000 or less, using 2000 census data. For cities: score 5 points if the city is located in a county with a population of 35,000 or less; and score 5 additional points if the population of the city is less than 5,050. For counties: score 5 points if the county population is less than 35,000 and score 5 additional points if the county population is less than 15,350. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown by the 2000 census data.

(F) Community Income (maximum 10 points). Ten points awarded to communities that have a low and moderate income level for a 4 person household that is in the bottom 90% of all county level 4 person low and moderate income levels, as provided in Appendix D of the application.

(3) Jobs (maximum 20 points).

(A) Job Impact (maximum 10 points). Awarded by taking the business' total job commitment, created and retained, and dividing by applicant's 2000 unadjusted population. This equals the job impact ratio. Score 5 points if this figure exceeds the median job impact ratio for prior years; and score 10 points if this figure exceeds 200% of the ratio. County applicants should deduct the 2000 census population amounts for all incorporated cities, except in the case where the county is sponsoring an application for a business that is or will be located in an incorporated city. In this case the city's population would be used, rather than the county's. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown in the 2000 census data.

(B) Cost per Job (maximum 10 points). Awarded by dividing the amount of TCF monies requested (including administration) by the number of full-time job equivalents to be created and/or retained. Points are then awarded in accordance with the following scale:

(i) Below $15,000--10 points.

(ii) Below $20,000--5 points.

(4) Business Emphasis (maximum 20 points).

(A) Manufacturers (max 10 points). Awarded if 51% or more of the jobs created and/or retained are or will be employed by a benefiting Business' whose primary Standard Industrial Classification (SIC) code number starts with 20-39 or if their primary North American Industrial Classification System (NAICS) code number starts with 31-33. This is based on the SIC number reported on the Business' Texas Workforce Commission (TWC) Quarterly Contribution Report, Form C-3, their IRS business tax return, or other documentation from the Texas Workforce Commission. Foreign businesses that have not had an SIC/NAICS code number assigned to them by either the TWC or IRS may submit alternative documentation to support manufacturing as their primary business activity to be eligible for these points.

(B) Small businesses (maximum 5 Points). Awarded if each/the benefiting Business employs no more than 50 employees for all locations both in and out of state. This number is determined by the business and any related entities, such as parent companies, subsidiaries and common ownership. Common ownership is considered 51% or more of the same owners.

(C) HUB--Historically Underutilized Business (maximum 5 Points). Awarded if each/the benefiting business is certified by the state Texas Building and Procurement Commission (TBPC) as a Historically Underutilized Business (HUB). Provide a copy of TBPC's certification in the application.

(g) Equity requirement by the business. All businesses are required to make financial contributions to the proposed project. A cash injection of a minimum of 2.5% of the total project cost is required. Total equity participation must be no less than 10% of the total project cost. This equity participation may be in the form of cash and/or net equity value in fixed assets utilized within the proposed project. A minimum of a 33% equity injection (of the total projects costs) in the form of cash and/or net equity value in fixed assets is required, if the business has been operating for less than three years and is accessing the R/E program. TDA staff will consider a business to have been operating for at least three years if:

(1) The business or principals have been operating for at least three years with comparable product lines or services;

(2) The parent company (100% ownership of the business) has been operating for at least three years with comparable product lines or services; or

(3) An individual or partnership (100% ownership of the business) has been in existence/operation for at least three years with comparable product lines or services.

(h) Application process for the main street program. The application and selection procedures consist of the following steps:

(1) Each applicant must submit two complete applications to Texas Historical Commission (THC). No changes to the application are allowed after the application deadline date, unless they are a result of TDA staff recommendations. Any change that occurs will only be

considered through the amendment/modification process after the contract is signed.

(2) Upon receipt of the applications, THC evaluates applications based on the scoring criteria and ranks them in descending order.

(3) TDA staff will then review the four highest ranking applications for eligibility and completeness in descending order based on the scoring. In the event the staff determines the application contains activities that are ineligible for funding, the application will be restructured or considered ineligible. The applicant will be notified of any deficiencies and given 10 business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature (e.g., lack of financial commitments) may be declined. In any event a determination is made that an application contains activities that are ineligible for funding, the application will be restructured or declined and the application materials will be retained by TDA. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDA staff then conducts a review of each complete application to make threshold determinations with respect to:

(A) The project feasibility;

(B) The strength of commitments from all other public and/or private investments identified in the application;

(C) Whether the use of TCF is appropriate to carry out the project proposed in the application;

(D) Whether efforts have been made to maximize other financial resources; and

(E) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TCF funds.

(5) Upon TDA staff determination that an application supports a feasible and eligible project, an on-site visit to the four highest scoring applicants may be conducted by TDA staff to discuss the project and program rules with the chief elected official, as applicable, or their designee and to visit the Main Street area.

(6) TDA staff prepares a project report and makes a recommendation for approval or denial to TDA's Commissioner or the Commissioner's designee for the final decision.

(7) The Commissioner reviews the recommendation and, if approved, an award letter is sent to the applicant's chief elected official.

(8) The contract is drafted and then reviewed by management and legal prior to two copies being mailed to award recipient. Upon receipt, award recipient has 30 days to review and execute both copies. Once returned to TDA, the contract will be fully executed by the Commissioner or the Commissioner's designee and then a single copy is returned to contractor.

(i) Scoring criteria for the main street program. There is a minimum 25-point threshold requirement. Applications will be reviewed for feasibility and placed in descending order based on the scoring criteria. There is a total of 100 points possible.

(1) In the event of a tie score, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on the applicant's most recently available annual county poverty rate, as provided in Appendix A of the application. Thus, preference is given to the applicant with the higher poverty rate.

(B) If a tie still exists after applying the first criteria, then applications are ranked from lowest to highest based on the most recently available, quarterly, county unemployment rate provided by the Texas Workforce Commission. Thus, preference is then given to the applicant with the higher unemployment rate.

(2) Project Feasibility (maximum 70 points). Measures the applicant's potential for a successful project. Each applicant must submit detailed and complete support documentation for each category. Compliance with the ten criteria for Main Street Recognition is required. First year Main Street Cities must receive prior approval from THC to apply and must submit the Main Street Criteria for Recognition Survey with the TCF application. The criteria include the following:

(A) Broad-based public support for the proposed project--(10 points). Show letters of support from the following:

(i) one letter from the County Historical Commission (A letter of support from the County Historical Commission is required to receive any points in this category.)

(ii) Score 10 points for letters from 75% or more of the businesses and/or property owners in the proposed Texas Capital Fund project area.

(B) Infrastructure Project Plan--(10 points). Show the city's plan for dealing with an infrastructure project. Develop a plan for access to local business during the infrastructure project. Provide public notification to support the project.

(C) ADA Compliance Goals--(10 points). Does the project address ADA accessibility issues? How will ADA issues be addressed in the project. If project does not address ADA compliance issues, is the Main Street District in compliance with Federal ADA standards. If the project does not address ADA compliance, no points will be awarded for this category. Partial points may be awarded depending upon the degree in which the project addresses ADA compliance issues.

(D) Historic Preservation Ethic and Preservation Impact--Main Street's Role--(10 points). Preservation is a major component of the THC's Main Street program. Officially designated cities are eligible for the Texas Capital Fund grant based on their inclusion in the Texas Main Street program. Points will be awarded if the applicant has successfully addressed the criteria as follows: if the applicant successfully addressed the issue of enhancing historic assets and/or historic preservation goals, up to 5 points may be awarded. If the applicant has demonstrated that they have a current historic preservation ordinance, up to 3 points may be awarded based upon the content of the ordinance. Up to 2 points may be awarded for historic preservation-related programs or incentives. The THC mission is "To protect and preserve the state's historic and prehistoric resources for the use, education, enjoyment and economic benefit of present and future generations." Therefore, in the interest of accomplishing our mission, please answer the following:

(i) Describe how the proposed Texas Capital Fund project enhances your historic assets or historic preservation goals.

(ii) Does the city have a current historic preservation ordinance?

(iii) Does the city have any historic preservation related programs or incentives?

(iv) List any building demolitions within your Main Street project area during the past five years. If you had any building demolitions in the past five years, what was the age of the buildings that were demolished?

(E) State Enterprise Zone and Economic Development Consideration--(10 points) Four points will be awarded if the city has a nominated or active Enterprise Zone project. Three points will be awarded if the city has the economic development sales tax (4A, 4B or both). Three points may be awarded for other viable economic development programs the city offers in order to further realize its full economic development potential. Please document any other economic development programs and strategies that your city is engaged in.

(F) Community Size--(10 points). Score 5 points if the population of the city is 12,000 or less; score additional 5 points if the population is less than 4,000, using 2000 census data. City population figures are net of the population held in adult or juvenile correctional institutions, as shown by the 2000 census data.

(G) Main Street Program Participation--(5 points). Points are awarded on the applicant's continuous participation in the Main Street program as follows: For every two years of continuous participation in the Main Street program, the applicant will be awarded 1 point. Points will only be awarded for every two consecutive years and will not be broken into half points for increments other than two-year increments. If a city leaves the Main Street program and then returns at a later date, "continuous participation" will be calculated from the date that they returned to the program. Applicants will receive the maximum amount of points if they have participated in the program for 10 continuous years.

(H) Texas Capital Fund Grant Training--(5 points). Has a city representative attended a Texas Capital Fund Main Street Improvements grant training workshop? At least one training workshop is held prior to each application deadline. List the date attended and the location. If the city is retaining a paid consultant to prepare the application, a city representative will still be required to attend training in order to receive the points in the category.

(3) Applicant (maximum 30 points). There are three applicant scoring categories each worth 5 to 10 points.

(A) Minority Hiring (maximum 10 points). Measures applicant's hiring practices. Percentage of minorities presently employed by the applicant divided by the percentage of minority residents within the local community. Score 10 points if the applicant's minority employment rate is equal to or greater than the applicant's community minority rate.

(B) Leverage (maximum 10 points). A 10% cash match is required for the grant. Additional points will be given for additional matching funds. 10% additional match equals 5 points. 20% additional match equals 10 points. The additional match can be cash and in-kind.

(C) Main Street Standing (maximum 10 points). If the Main Street program received National Recognition the prior year, 10 points will be awarded.

(j) Threshold criteria for the main street program. In order for its application to be considered, an applicant must meet the requirements of either paragraph (1) or (2) and paragraph (3) of this subsection.

(1) The national objective of aiding in the prevention or elimination of slum or blight on a spot basis. To show how this objective will be met, the applicant must:

(A) document that the project qualifies as slum or blighted on a spot basis under local law; and

(B) describe the specific condition of blight or physical decay that is to be treated.

(2) Area slums/blight objective. Document the boundaries of the area designated as a slum or blighted, document the conditions which qualified it under the definition in §255.1(a)(14) of this title (relating to General Provisions), and the way in which the assisted activity addressed one or more of the conditions which qualified the area as slum or blighted.

(3) Main street designation. The applicant must be designated by the THC as a Main Street City prior to submitting a TCF application for main street improvements and must remain a participating city for the duration of the award/contract.

(k) Application process for the downtown revitalization program. The TDA will only accept applications during the months identified in the program guidelines. Applications are reviewed after they have been competitively scored. Staff makes recommendation for award to TDA Commissioner or the Commissioner's designee. TDA Commissioner makes the final decision. The application and selection procedures consist of the following steps:

(1) Each applicant must submit a complete application to TDA's Rural Economic Development Division. No changes to the application will be allowed after the application deadline date, unless they are a result of TDA staff recommendations. Any change that occurs will only be considered through the amendment/modification process after the contract is signed.

(2) Upon receipt of applications, TDA staff reviews scores for validity and ranks them in descending order.

(3) TDA staff will review the applications for eligibility and completeness in descending order based on the scoring. The applicant will be given 10 business days to rectify all deficiencies. An application containing an excessive number of deficiencies, or deficiencies of a material nature will be determined incomplete and returned. In the event staff determines that an application contains activities that are ineligible for funding, the application will be restructured or returned to the applicant. An application resubmitted for future funding cycles will be competing with those applications submitted for that cycle. No preferential placement will be given an application previously submitted and not funded.

(4) TDA staff then conducts a review of each complete application to make threshold determinations with respect to:

(A) The strength of commitments from all other public and/or private investments identified in the application;

(B) Whether the use of TCF is appropriate to carry out the project proposed in the application;

(C) Whether efforts have been made to maximize other financial resources; and

(D) The ability of the applicant to operate or maintain any public facility, improvements, or services funded with TCF funds.

(l) Scoring criteria for downtown revitalization program. There are a total of 100 points.

(1) In the event of a tie score and insufficient funds to approve all applications, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on applicant's most recently available annual county poverty rate, as provided in Appendix A of the application. Thus, preference is given to the applicant with the higher poverty rate.

(B) If a tie still exists after applying the first criteria then applications are ranked from lowest to highest based on the most recently available, quarterly, county unemployment rate provided by the

Texas Workforce Commission. Thus, preference is then given to the applicant with the higher unemployment rate.

(2) Maximum 100 points.

(A) Unemployment (maximum 10 points). Five points awarded if the applicant's quarterly county unemployment rate (the most recently available 3 months will be used) is higher than the state rate, indicating that the city is economically below the state average. Ten points awarded if the applicant's most recently available quarterly county unemployment rate is 1.5% over the state rate.

(B) Poverty (maximum 15 points). Awarded if the applicant's most recently available annual county poverty rate, as provided in Appendix A of the Application, is higher than the annual state rate, indicating that the community is economically below the state average. Applicants will score 5 points if their rate meets or exceeds the state average; score 10 points if this figure exceeds the state average by at least 15%; and score 15 points if this figure exceeds the state average by at least 25%.

(C) Enterprise/Empowerment/Defense Zone (maximum 5 points). A project located in a state designated enterprise zone, federal enterprise community, federal empowerment zone, or defense zone receives these five points.

(D) Previous Contracts (Maximum 10 points). Award 5 points if the community has been awarded one contract in the current calendar year or preceding 2 calendar years. Award 10 points if the community has been awarded zero contracts in the current calendar year or the preceding 2 calendar years.

(E) Community Population (maximum 10 points). Points are awarded to applying cities with populations of 5,050 or less, using 2000 census data. Score 5 points if the city is located in a county with a population of 35,000 or less; and score 5 additional points if the population of the city is less than 5,050. Community population figures are net of the population held in adult or juvenile correctional institutions, as shown by the 2000 census data.

(F) Community Income (maximum 10 points). Ten points awarded to communities that have a low and moderate income level for a 4 person household that is in the bottom 90% of all county level 4 person low and moderate income levels, as provided in Appendix D of the application.

(G) Leverage (maximum 10 points). A 10% cash match is required for the grant. Additional points will be given for additional matching funds. 10% additional match equals 5 points. 20% additional match equals 10 points. The additional match can be cash and in-kind.

(H) Minority Hiring (maximum 10 points). Measures applicant's hiring practices. Award 5 points if the city's minority employment rate is equal to or greater than the community minority percentages rate. Award 10 points if the city's minority employment rate is equal to or greater than 125% of the community minority percentage rate or in cities where the minority population is 80% or greater, the applicant must employ 95% minorities.

(I) Commercial Support (maximum 10 points) Award 5 points for letters from 50% or more of the businesses in the Downtown Revitalization area. Award 10 points for letters from 75% of the businesses in the Downtown Revitalization area.

(J) Sidewalks and ADA Compliance (10 points). Points awarded if a minimum of 70% of the requested funds will be used for sidewalk and/or ADA compliance activities.

(m) Threshold criteria for the downtown revitalization program. In order for its application to be considered, an applicant must meet the requirements of either paragraph (1) or (2) of this subsection.

(1) The national objective of aiding in the prevention or elimination of Slum or Blight on a spot basis. To show how this objective will be met, the applicant must:

(A) document that the project qualifies as slum or blighted on a spot basis under local law; and

(B) describe the specific condition of blight or physical decay that is to be treated.

(2) Area slums/blight objective. Document the boundaries of the area designated as a slum or blighted, document the conditions which qualified it under the definition in §255.1(a)(14) of this title, and the way in which the assisted activity addressed one or more of the conditions which qualified the area as slum or blighted.

§255.8. Regional Review Committees.

(a) Composition. There is a regional review committee in each of the 24 state planning regions. Each committee consists of at least 12 members appointed by the governor. Composition of each regional committee reflects geographic diversity within the region, difference in population among eligible localities, and types of government (general law cities, home rule cities, and counties). The chairperson of the committee is also appointed by the governor. Members of the committee serve two-year terms. An individual may not serve as a member of a regional review committee while serving as a member of the State Community Development Review Committee.

(b) Role. Each regional review committee reviews and scores all applications submitted from within its region under the community development fund. Each regional review committee may review and comment on other TxCDBG applications. Each regional review committee sends its scores and comments to the Office. Regional review committees may elect to utilize staff of regional planning commissions to assist with project review responsibilities except when staff of the regional planning commission intend to prepare TxCDBG applications for the current funding cycle or when staff of the regional planning commission intend to administer TxCDBG projects that could receive TxCDBG funding under the current funding cycle. When staff of the regional planning commissions cannot assist with project review responsibilities, the Office staff may provide the assistance.

(c) General requirements. In the performance of its responsibilities, each regional review committee shall comply with all federal and state laws and regulations relating to the administration of community development block grant nonentitlement area funds including, but not limited to, requirements of this subchapter, the scoring procedures specified in the current Regional Review Committee Guidebook, and the procedures established by the regional review committee under the TxCDBG.

(1) Meetings. Each meeting held by a regional review committee shall conform to the following requirements.

(A) The regional review committee shall notify each eligible unit of general local government within the regional review committee's state planning region, in writing, of the date, time and location of its organizational meeting at least five days prior to the meeting. The regional review committee shall notify each applicant within its region, in writing, of the date, time and location of its scoring meeting at least five days prior to the meeting. The notices must be in the format specified by the Office in the most recent Regional Review Committee Guidebook. The notices must also be published in a regional newspaper at least three days prior to the meeting. Articles published in such newspapers which satisfy the content and timing requirements of this

subparagraph will be accepted by the Office in lieu of publication of notices. The regional review committee must determine at its organizational meeting whether it will have a housing set-aside and include the decision and amount of housing set-aside in the regional review committee scoring guidelines.

(B) Each applicant shall be provided with the opportunity to make a presentation to the regional review committee at its scoring meeting.

(C) The order of the presentations shall be randomly selected by the regional review committee

(D) All discussions, deliberations and votes shall be made in public except for items which would be specifically exempted under the Texas Open Meetings Act. The scoring of applications must occur at the same meeting of the regional review committee at which the presentations by applicants are made.

(E) A quorum of a simple majority of the current members of the regional review committee, rounded to the nearest whole number, shall be present. Any actions taken by a regional review committee in which a quorum was not present shall be voidable, provided however, that if a conflict of interest situation has required a regional review committee member to excuse himself, thus dropping the number of participating members below the simple majority requirement, a quorum shall have been considered present.

(2) Conflicts of interest. No member of a regional review committee shall vote on an application if the member is on the governing body of the applicant or in cases where that member has a personal or pecuniary interest as defined under state law. A county judge or county commissioner may not score an application from an incorporated city within the county, unless specifically authorized by the regional review committee. A regional review committee member may not discuss any application, including the scoring of any application that the member is allowed to score, with any person that may benefit from an award of TxCDBG funds to such application. If a regional review committee member discusses an application with any person that may benefit from an award of TxCDBG funds to such application, the regional review committee member shall abstain from the scoring of that application.

(3) Voting. Only appointed members of a regional review committee may vote on an action of the regional review committee. A regional review committee member may designate an alternate to participate in the member's absence. Each regional review committee shall retain all ballots or other voting records used by its members. Such records shall be maintained in an accessible location and be made available for inspection by the public for a period of one year. Each member of a regional review committee shall score each application individually and shall sign each of his or her ballots and other voting records or scoring sheets. The high and low scores are eliminated and the average of the remaining individual scores is the regional review committee's score on each scoring factor. Consensus scoring is not permitted.

(4) Scoring procedures. Each regional review committee (RRC) must submit its scoring procedures to the Office for approval before the procedures are disseminated to all eligible applicants in its region. The committee must establish, as part of the organizational meeting, a scoring methodology for each of the selection factors listed under Local Effort and Merits of the Project consistent with HUD regulations, as determined by TXCDBG. The scoring procedure must prescribe the method of documenting the committee member's score. The RRC may:

(A) further subdivide the broad selection factors/categories into smaller categories/increments and provide additional detail in the RRC scoring for the Local Effort and Merits of the Project;

(B) select certain "Key questions/Considerations/Factors" that can be used to evaluate the broad selection factor/category and develop a specific number of scoring ranges, including a scoring range for Yes/No answers; or

(C) a combination of A and B, which includes a subdivision of the categories into smaller increments and key questions/considerations with specific scoring ranges. Factors selected must be unambiguous in the method of scoring them. As part of the process, the committee must retain documentation showing how each committee member awarded points under this factor and provide a copy of this documentation of the TXCDBG.

(d) Appeals. An applicant may appeal the actions of the regional review committee established in its state planning region by following the procedures set forth in this subsection. The Office will withhold the running of computer scores on community development fund applications for five working days after the regional review committee's scoring meeting or until all regional appeals, if any, have been resolved, whichever is longer. A regional review committee must provide written notification of each appeal to all applicants in the region. An applicant that is adversely affected by the action of its regional review committee on an appeal, may appeal that action in accordance with the procedures specified in this subsection.

(1) An applicant shall notify its regional review committee, in writing, of an alleged violation of regional review committee procedures committed by the regional review committee within five working days after the date of the regional review committee meeting which is the subject of the appeal. The applicant shall also send a copy of the appeal to the Office. All appeals must be based on a specifically identified violation of regional review committee procedures.

(2) Within 10 working days after the receipt of an appeal, the regional review committee shall notify all the applicants within its region that the regional review committee will reconvene to hear the appeal. If a quorum of the regional review committee agrees that the alleged procedural violation occurred, the regional review committee shall sustain the appeal, make appropriate adjustments to regional scores, and notify the Office. If a quorum of the regional review committee votes to deny the appeal, the regional review committee shall provide all applicants in the region and the Office with a written statement of the basis of its denial.

(3) If the appeal is resolved, the Office runs the computer scores and provides funding recommendations to the state review committee.

(4) If the appeal is not resolved, the Office prepares an appeal file for the state review committee. The file includes:

(A) the appeal;

(B) the response of the regional review committee;

(C) Office staff reports; and

(D) comments of other interested parties.

(5) The state review committee shall make one of the following recommendations to the executive director of the Office:

(A) sustain the appeal and suggest corrective actions; or

(B) reject the appeal and sustain the regional scores.

§255.9. Colonia Fund.

(a) General provisions. This fund covers the payment of assessments, access fees, and capital recovery fees for low and moderate income persons for eligible water and sewer improvements projects, all other program eligible activities, eligible planning activities projects, and the establishment of colonia self-help centers to serve severely distressed unincorporated areas of counties which meet the definition of a colonia under this fund. A colonia is defined as: any identifiable unincorporated community that is determined to be a colonia on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and was in existence as a colonia prior to November 28, 1990. For an eligible county to submit an application on behalf of eligible colonia areas, the colonia areas must be within 150 miles of the Texas-Mexico border region, except that any county that is part of a standard metropolitan statistical area with a population exceeding one million is not eligible under this fund.

(1) An applicant may not submit an application under this fund and also under any other TxCDBG fund category at the same time if the proposed activity under each application is the same or substantially similar.

(2) In addition to the threshold requirements of §255.1(h) and (n) of this title (relating to General Provisions), in order to be eligible to apply for colonia funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(3) Eligibility for the Office's colonia economically distressed areas program EDAP fund (colonia EDAP fund) is limited to counties, and nonentitlement cities (that meet other eligibility requirements including the geographic requirements of the Colonia Fund), located in those counties, that are eligible under the TxCDBG Colonia Fund and Texas Water Development Board's EDAP. Eligible colonia EDAP fund projects shall be located in unincorporated colonias and in eligible cities that annexed the eligible colonia where improvements are to be made within five years after the effective date of the annexation, or are in the process of annexing the colonia where improvements are to be made. A colonia EDAP fund application cannot be submitted until the construction of the Texas Water Development Board's Economically Distressed Areas Program financed water or sewer system begins.

(4) In accordance with Subchapter Z, Chapter 43, §43.905 of the Local Government Code, eligible colonia areas annexed by municipalities on or after September 1, 1999, remains eligible for five years after the effective date of the annexation to receive any form of assistance for which the colonia would be eligible if the annexation had not occurred. A nonentitlement city located in a county that is eligible under the TxCDBG Colonia Fund and Texas Water Development Board's Economically Distressed Areas Program that has annexed a colonia area is an eligible applicant for the Office's colonia EDAP fund. However, an application for TxCDBG colonia construction fund or colonia planning fund assistance for a colonia area annexed by a municipality on or after September 1, 1999, may only be submitted by the county where the annexed colonia area is located.

(b) Eligible activities. The only eligible activities under the colonia fund are:

(1) the payment of assessments (including any charge made as a condition of obtaining access) levied against properties owned and occupied by persons of low and moderate income to recover the capital cost for a public water and/or sewer improvement;

(2) payment of the cost of planning community development (including water and sewage facilities) and housing activities; costs for the provision of information and technical assistance to residents of the area in which the activities are located and to appropriate nonprofit organizations and public agencies acting on behalf of the residents; and costs for preliminary surveys and analyses of market needs, preliminary site engineering and architectural services, site options, applications, mortgage commitments, legal services, and obtaining construction loans;

(3) other activities eligible under the Housing and Community Development Act of 1974, §105, as amended, designed to meet the needs of residents of colonias;

(4) the establishment of colonia self-help centers and activities conducted by colonia self-help centers in accordance with the provisions of Chapter 2306, Subchapter Z, of the Government Code.

(5) For the Office's colonia EDAP fund, eligible activities are limited to those that provide assistance to low and moderate income colonia residents that cannot afford the costs associated with connections and service to water or sewer systems funded through the Texas Water Development Board's Economically Distressed Areas Program. The eligible activities are water distribution lines connecting to water lines installed through the Texas Water Development Board's Economically Distressed Areas Program (when approved by the TxCDBG), sewer collection lines connecting to sewer lines installed through the Texas Water Development Board's Economically Distressed Areas Program (when approved by the TxCDBG), water or sewer connection fees, water or sewer taps, water meters, water or sewer yard service lines, plumbing improvements associated with the provision of water or sewer service to an occupied housing unit, water or sewer house service connections, reasonable associated administrative costs, and reasonable associated engineering costs.

(c) Types of applications. Eligible applicants may submit one application for the colonia construction fund and the colonia planning fund. Eligible applicants may submit one application for the colonia EDAP fund, unless the TxCDBG has an excess amount of colonia EDAP funds available in which case an eligible applicant could submit more than one application for the colonia EDAP fund. Eligible planning activities cannot be included in an application for the colonia construction fund. Two separate fund categories are available under the colonia planning fund. The colonia area planning fund is available for eligible planning activities that are targeted to selected colonia areas. The colonia comprehensive planning fund is available for countywide comprehensive planning activities that include an assessment and profiles of a county's colonia areas. Separate competitions are held for the colonia area planning fund and colonia comprehensive planning fund allocations. A county that has previously received a colonia comprehensive planning fund grant award from the Office may not submit another application for colonia comprehensive planning fund assistance. For a county to be eligible to submit an application for the colonia area planning fund, the county must have previously completed a colonia comprehensive plan that prioritizes problems and colonias for future action. The colonia or colonias included in the colonia area planning fund application must be colonias that were included in the colonia comprehensive plan.

(d) Funding cycle. The colonia construction fund is allocated to eligible county applicants on a biennial basis for the 2007 and 2008 program years pursuant to a competition held for the 2007 program year applicants. The colonia planning fund is allocated on an annual basis to eligible county applicants through competitions conducted during the program year. Applications for funding must be received by the Office by the dates and times specified in the most recent application guide for each separate colonia fund category. The colonia self-help centers fund is allocated on an annual basis to counties included in Subchapter Z, Chapter 2306, §2306.582, Government Code, and/or counties desig-

nated as economically distressed areas under Chapter 17, Water Code. The colonia EDAP fund is allocated on an annual basis and the funds are distributed on an as-needed basis.

(e) Selection procedures.

(1) On or before the application deadline, each eligible county may submit one application for the colonia construction fund, for colonia comprehensive planning, and for colonia area planning. Eligible applicants for the colonia EDAP fund may submit one application after construction begins on the water or sewer system financed by the Texas Water Development Board's Economically Distressed Areas Program.

(2) Upon receipt of an application, the Office staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within ten calendar days of the date of the staff's notification.

(3) Each regional review committee may, at its option, review and comment on a colonia fund proposal from a jurisdiction within its state planning region. These comments will become part of the application file, provided such comments are received by the Office prior to scoring of the applications.

(4) The Office then scores the colonia construction fund and colonia planning fund applications to determine rankings. Scores on the selection factors are derived from standardized data from the Census Bureau, other federal or state sources, and from information provided by the applicant. For colonia EDAP fund applications, the Office evaluates information in each application and other factors before the completion of a final technical review of each application.

(5) Following a final technical review, the Office staff presents the funding recommendations for the 2007 and 2008 colonia construction fund and the 2007 colonia planning fund to the executive director of the Office.

(6) The executive director of the Office reviews the 2007 final recommendations and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(7) Upon announcement of the 2007 contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(8) When the 2008 program year TxCDBG allocation becomes available, the executive director of the Office reviews the 2008 program year colonia construction fund final recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(9) Upon announcement of the 2008 program year colonia construction fund contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.

(f) Selection criteria (colonia construction fund). The following is an outline of the selection criteria used by the Office for scoring colonia construction fund applications. For the 2007 and 2008 program years, four hundred thirty points are available.

(1) Community distress (total--35 points). All community distress factor scores are based on the unincorporated population of the applicant. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

(A) Percentage of persons living in poverty--15

(B) Per capita income--10

(C) Percentage of housing units without complete plumbing--5

(D) Unemployment rate--5

(2) Benefit to low and moderate income persons (total--30 points). A formula is used to determine the percentage of TxCDBG funds benefiting low to moderate income persons. The percentage of low to moderate income persons benefiting from each construction, acquisition, and engineering activity is multiplied by the TxCDBG funds requested for each corresponding construction, acquisition, and engineering activity. Those calculations determine the amount of TxCDBG benefiting low to moderate income person for each of those activities. Then, the funds benefiting low to moderate income persons for each of those activities are added together and divided by the TxCDBG funds requested minus the TxCDBG funds requested for administration to determine the percentage of TxCDBG funds benefiting low to moderate income persons. Points are then awarded in accordance with the following scale:

(A) 100% to 90% of funds benefiting low to moderate income persons--30

(B) 89.99% to 80% of funds benefiting low to moderate income persons--25

(C) 79.99% to 70% of funds benefiting low to moderate income persons--20

(D) 69.99% to 60% of funds benefiting low to moderate income persons--15

(E) Below 60% of funds benefiting low to moderate income persons--5

(3) Project priorities (total--195 points) When necessary, a weighted average is used to assign scores to applications which include activities in the different project priority scoring levels. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for engineering and administration, a percentage of the total TxCDBG construction dollars for each activity is calculated. The percentage of the total TxCDBG construction dollars for each activity is then multiplied by the appropriate project priorities point level. The sum of the calculations determines the composite project priorities score. The different project priority scoring levels are:

(A) activities (service lines, service connections, and/or plumbing improvements) providing access to water and/or sewer systems funded through the Texas Water Development Board Economically Distressed Area program--195

(B) first time public water service activities (including yard service lines)--145 points

(C) first time public sewer service activities (including yard service lines)--145 points

(D) installation of approved residential on-site wastewater disposal systems for providing first time service--145 points

(E) installation of approved residential on-site wastewater disposal systems for failing systems that cause health issues--140 points

(F) housing activities--140 points

(G) first time water and/or sewer service through a privately-owned for profit utility--135 points

(H) expansion or improvement of existing water and/or sewer service--120 points

(I) street paving and drainage activities--75 points

(J) all other eligible activities--20 points

(4) Matching funds (total--20 points). An applicant's matching share may consist of one or more of the following contributions: cash; in-kind services or equipment use; materials or supplies; or land. An applicant's match is considered only if the contributions are used in the same target areas for activities directly related to the activities proposed in its application; if the applicant demonstrates that its matching share has been specifically designated for use in the activities proposed in its application; and if the applicant has used an acceptable and reasonable method of valuation. The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the applicants according to the 2000 Census. Applications that include a housing rehabilitation and/or affordable new permanent housing activity for low- and moderate-income persons as a part of a multi-activity application do not have to provide any matching funds for the housing activity. This exception is for housing activities only. The TxCDBG does not consider sewer or water service lines and connections as housing activities. The TxCDBG also does not consider on-site wastewater disposal systems as housing activities. Demolition/clearance and code enforcement, when done in the same target area in conjunction with a housing rehabilitation activity, is counted as part of the housing activity. When demolition/clearance and code enforcement are proposed activities, but are not part of a housing rehabilitation activity, then the demolition/clearance and code enforcement are not considered as housing activities. Any additional activities, other than related housing activities, are scored based on the percentage of match provided for the additional activities.

(A) Applicants with populations equal to or less than 1,500 according to the 2000 census:

(i) match equal to or greater than 5.0% of grant request--20;

(ii) match at least 2.0% but less than 5.0% of grant request--10;

(iii) match less than 2.0% of grant request--0.

(B) Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census:

(i) match equal to or greater than 10% of grant request--20;

(ii) match at least 2.5% but less than 10% of grant request--10;

(iii) match less than 2.5% of grant request--0.

(C) Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census:

(i) match equal to or greater than 15% of grant request--20;

(ii) match at least 3.5% but less than 15% of grant request--10;

(iii) match less than 3.5% of grant request--0.

(D) Applicants with populations over 5,000 according to the 2000 census:

(i) match equal to or greater than 20% of grant request--20;

(ii) match at least 5.0% but less than 20% of grant request--10;

(iii) match less than 5.0% of grant request--0.

(5) Project design (total--140 points). Each application is scored based on how the proposed project resolves the identified need and the severity of need within the applying jurisdiction. A more detailed description on the assignment of points under the project design scoring is included in the application guide for this fund and in paragraph (6) of this subsection. Each application is scored by a committee composed of TxCDBG staff using the following information submitted in the application:

(A) the severity of need within the colonia area(s) and how the proposed project resolves the identified need (additional consideration is given to water activities addressing impacts from drought conditions);

(B) the TxCDBG cost per low to moderate income beneficiary;

(C) the applicant's past efforts, especially the applicant's most recent efforts, to address water, sewer, and housing needs in colonia areas through applications submitted under the TxCDBG community development fund or through community development block grant entitlement funds;

(D) the projected water and/or sewer rates after completion of the project based on 3,000 gallons, 5,000 gallons, and 10,000 gallons of usage;

(E) the ability of the applicant to utilize the grant funds in a timely manner;

(F) the availability of grant funds to the applicant for project financing from other sources;

(G) whether the applicant, or the service provider, has waived the payment of water or sewer service assessments, capital recovery fees, and other access fees for the proposed low and moderate income project beneficiaries;

(H) whether the applicant's proposed use of TxCDBG funds is to provide water or sewer connections/yardlines and/or plumbing improvements that provide access to water/sewer systems financed through the Texas Water Development Board Economically Distressed Areas Program;

(I) whether the applicant has already met its basic water and wastewater needs if the application is for activities other than water or wastewater; and

(J) whether the project has provided for future funding necessary to sustain the project.

(K) whether the applicant has provided any local matching funds for administrative, engineering, or construction activities.

(L) the applicant's past performance on previously awarded TXCDBG contracts.

(M) proximity of project site to entitlement cities or metropolitan statistical areas.

(6) Project design scoring guidelines. Project design scores are assigned by Office staff using guidelines that first consider the severity of the need for each application activity and how the project resolves the need described in the application. The severity of need and resolution of the need determine the maximum project design score that can be assigned to an application. After the maximum project design score has been established, points are then deducted from this maximum score through the evaluation of the other project design evaluation factors until the maximum score and the point deductions from that maximum score determine the final assigned project design score. When necessary, a weighted average is used to set the maximum project design score to applications that include activities in the different severity of the need/project resolution maximum scoring levels. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for engineering and administration, a percentage of the total TxCDBG construction dollars for each activity is calculated. The percentage of the total TxCDBG construction dollars for each activity is then multiplied by the appropriate maximum project design point level. The sum of the calculations determines the maximum project design score that the applicant can be assigned before points are deducted based on the evaluation of the other project design factors.

(A) Maximum project design score that can be assigned based on the severity of the need and resolution of the problem.

(i) Activities providing first-time public sewer service to the area--maximum score 140 points.

(ii) Activities providing first-time public water service to the area--maximum score 140 points.

(iii) Installation of approved residential on-site wastewater disposal systems providing first-time sewer service--maximum score 140 points.

(iv) installation of approved residential on-site wastewater disposal systems for failing systems that cause health issues--maximum score 130 points.

(v) Housing rehabilitation and eligible new housing construction--maximum score 130 points.

(vi) Water activities addressing and resolving water supply shortage from drought conditions--maximum score 130 points.

(vii) Water or sewer activities expanding or improving existing water or sewer system--maximum score 125 points.

(viii) Street paving activities providing first time surface pavement to the area--maximum score 100 points.

(ix) Installation of designed drainage structures providing first time designed drainage system to the area--maximum score 100 points.

(x) Reconstruction of streets with existing surface pavement--maximum score 90 points.

(xi) Installation of improvements or drainage structures to a designed drainage system--maximum score 90 points.

(xii) All other eligible activities--maximum score 80 points.

(B) TxCDBG cost per low to moderate income beneficiary. The total amount of TxCDBG funds requested by the applicant is divided by the total number of low to moderate income persons benefiting from the application activities to determine the TxCDBG cost per beneficiary.

(i) Cost per low to moderate income beneficiary is equal to or less than $2,000. Deduct zero points from the set maximum project design score.

(ii) Cost per low to moderate income beneficiary is greater than $2,000 but equal to or less than $4,000. Deduct 1 point from the set maximum project design score.

(iii) Cost per low to moderate income beneficiary is greater than $4,000 but equal to or less than $6,000. Deduct 2 points from the set maximum project design score.

(iv) Cost per low to moderate income beneficiary is greater than $6,000 but equal to or less than $8,000. Deduct 3 points from the set maximum project design score.

(v) Cost per low to moderate income beneficiary is greater than $8,000 but equal to or less than $10,000. Deduct 4 points from the set maximum project design score.

(vi) Cost per low to moderate income beneficiary is greater than $10,000. Deduct 5 points from the set maximum project design score.

(C) The applicant's past efforts, especially the applicant's most recent efforts, to address water, sewer, and housing needs in colonia areas through applications submitted under the TxCDBG community development fund or through community development block grant entitlement funds.

(i) The nonentitlement county submitted an application under the TxCDBG community development fund 2005/2006 biennial competition that was not addressing water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(ii) The nonentitlement county submitted an application under the TxCDBG community development fund 2003/2004 biennial competition that was not addressing water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(iii) The entitlement county did not use 2005 CDBG entitlement funds to address water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(iv) The entitlement county did not use 2004 CDBG entitlement funds to address water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(D) The projected water and/or sewer rates after completion of the project based on 3,000 gallons, 5,000 gallons, and 10,000 gallons of usage.

(i) The projected water and/or sewer rates may be too high for the application beneficiaries. Deduct 1 point from the set maximum project design score.

(ii) The projected water and/or sewer rates are too low to discourage water conservation by the application beneficiaries. Deduct 1 point from the set maximum project design score.

(E) The ability of the applicant to utilize the grant funds in a timely manner.

(i) The application includes the acquisition of real property, easements or rights-of-way. Deduct 1 point from the set maximum project design score.

(ii) The application includes matching funds that have not been secured by the applicant. Deduct 1 point from the set maximum project design score.

(iii) The proposed application target area is not located in an area where a service provider already has the certificate of convenience and necessity (CCN) needed to provide service to the application beneficiaries. Deduct 1 point from the set maximum project design score.

(F) The availability of grant funds to the applicant for project financing from other sources. Grant funds for any activity included in the application are available from another source. Deduct 1 point from the set maximum project design score.

(G) The applicant, or the service provider, has not waived the payment of water or sewer service assessments, capital recovery fees, and other access fees for the proposed low and moderate income project beneficiaries.

(i) Assessments and fees budgeted in the application are equal to or less that $100 per low and moderate income household. Deduct 2 points from the set maximum project design score.

(ii) Assessments and fees budgeted in the application are greater than $100 but equal to or less that $200 per low and moderate income household. Deduct 4 points from the set maximum project design score.

(iii) Assessments and fees budgeted in the application are greater than $200 but equal to or less that $300 per low and moderate income household. Deduct 6 points from the set maximum project design score.

(iv) Assessments and fees budgeted in the application are greater than $300 but equal to or less that $500 per low and moderate income household. Deduct 8 points from the set maximum project design score.

(v) Assessments and fees budgeted in the application are greater than $500 per low and moderate income household. Deduct 10 points from the set maximum project design score.

(H) Applicant's proposed use of TxCDBG funds does not provide water or sewer connections/yardlines and/or plumbing improvements that provide access to water/sewer systems financed through the Texas Water Development Board Economically Distressed Areas Program. Deduct 2 points from the set maximum project design score.

(I) The application is for activities other than water or wastewater and the applicant has not already met its basic water and wastewater needs. Deduct 3 points from the set maximum project design score,

(J) The applicant has not documented that future funding necessary to sustain the project is available. Deduct 3 points from the set maximum project design score,

(7) Past performance. An applicant receives from zero to ten points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will primarily be based on an assessment of the applicant's performance on the applicant's two most recent TxCDBG contracts that have reached the end of the original contract period stipulated in the contract. TxCDBG staff may also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. An applicant that has never received a TxCDBG grant award will automatically receive these points. TxCDBG staff will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance on TxCDBG contracts after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance may include, but is not necessarily limited to the following:

(A) The applicant's completion of the previous contract activities within the original contract period.

(B) The applicant's submission of the required closeout documents within the period prescribed for such submission.

(C) The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs.

(D) The applicant's timely response to audit findings on previous TxCDBG contracts.

(E) The applicant's submission of all contract reporting requirements such as quarterly progress reports, certificates of expenditures, and project completion reports.

(g) Selection criteria (colonia area planning fund). The following is an outline of the selection criteria used by the Office for scoring applications for eligible planning activities under this fund. Three hundred forty points are available.

(1) Community distress (total--up to 35 points). All community distress factor scores are based on the unincorporated population of the applicant. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

(A) Percentage of persons living in poverty--15 points

(B) Per capita income--10 points

(C) Percentage of housing units without complete plumbing--5 points

(D) Unemployment Rate--5 points

(2) Benefit to low and moderate income persons (total--30 points). Points are awarded based on the low and moderate income per-

centage for all of the colonia areas where project activities are located according to the following scale:

(A) 100% to 90% of funds benefiting low to moderate income persons--30

(B) 89.99% to 80% of funds benefiting low to moderate income persons--25

(C) 79.99% to 70% of funds benefiting low to moderate income persons--20

(D) 69.99% to 60% of funds benefiting low to moderate income persons--15

(E) Below 60% of funds benefiting low to moderate income persons--5

(3) Project design (total--255 points). Each application is scored based on how the proposed planning effort resolves the identified need and the severity of need within the applying jurisdiction. A colonia planning fund application must receive a minimum score for the project design selection factor of at least 70 percent of the maximum number of points available under this factor to be considered for funding. A more detailed description on the assignment of points under the project design scoring is included in the application guide for this fund. Each application is scored by TxCDBG staff using the following information submitted in the application:

(A) the severity of need within the colonia area(s) (total--up to 60 points);

(i) Evidence of severity of need as described in originally received application (total--up to 10 points).

(ii) Primary need within all target area colonia(s) generally as reported in originally received application (total--up to 20 points):

(I) all target area colonia(s) not platted (up to 20 points)

(II) all target area colonia(s) with no water (up to 20 points)

(III) all target area colonia(s) with no wastewater (up to 20 points)

(IV) all or some target area colonia(s) are partially platted or platted but not recorded (up to 10 points)

(V) target area colonia(s) partial water (up to 10 points)

(VI) target area colonia(s) partial sewer (up to 10 points)

(iii) Population (total--10 points). The change in county population from 1990 and 2000 is between:

(I) greater than 5% but less than or equal to 10% (2 points)

(II) greater than 10% but less than or equal to 15% (4 points)

(III) greater than 15% but less than or equal to 20% (6 points)

(IV) greater than 20% but less than or equal to 25% (8 points)

(V) greater than 25% (10 points)

(iv) Needs are clearly identified in original application by priority through a community needs assessment (total--up to 5 points).

(v) Evidence provided in the original application of strong citizen input or known citizen involvement in addressing need (total--up to 5 points).

(vi) Evidence provided in the original application of effort to notify special groups to solicit information on severity of need (total--up to 5 points).

(vii) Evidence provided in the original application that the public hearings to solicit input on needs were performed as described in the application guide (total--up to 5 points).

(B) how clearly the proposed planning effort removes barriers to the provision of public facilities to the colonia area(s) and results in a strategy to resolve the identified needs (total--up to 60 points);

(i) Proposed planning efforts as described in the application are clear, concise and reasonable (total--up to 15 points).

(ii) Proposed target area is clearly defined in the application (total--up to 15 points).

(iii) Proposed planning efforts as described in the application match the needs in the target area (total--up to 15 points).

(iv) Evidence in the application that the county is organized to implement the plan or would ensure that the plan is implemented (total--up to 15 points).

(C) the planning activities proposed in the application (total--up to 65 points);

(i) The description of planning activity in the original application:

(I) Describes eligible activities (total--up to 7 points).

(II) Describes understanding of plan process (total--up to 7 points).

(III) Addresses identified needs (total--up to 7 points).

(IV) Appears to result in solution to problems (total--up to 7 points).

(V) Indicates a strategy that can be implemented (total--7 points).

(ii) Considering the applicant's probable capability, the Colonia Questionnaire in the original application indicates an attempt to control problems and the original submission was complete (total--up to 10 points).

(iii) Applicant has indicated in the application that a capital improvement programming process is routinely accomplished or will be developed as part of the planning project (total--up to 10 points).

(iv) Applicant's responses to questions in the originally submitted application appear to indicate that the applicant will produce a valid Capital Improvements Program that would draw on local resources and other grant/loan programs (total--up to 10 points).

(D) whether each proposed planning activity is conducted on a colonia-wide basis (total--up to 10 points). All proposed activities will be conducted on a colonia-wide basis (up to 10 points);

(E) the extent to which any previous planning efforts for colonia areas have been accomplished (total--up to 12 points). Applicant was a previous recipient of Colonia Planning Funds and some implementation of previously funded activities or special or extenuating circumstances prohibiting implementation exist. Points will be awarded if applicant is not a previous recipient of a Colonia Planning Fund award. Points will not be awarded if applicant did not implement previously funded activities and no special or extenuating circumstances prohibiting implementation exist;

(F) the TxCDBG cost per low to moderate income beneficiary;

(i) TxCDBG cost per low to moderate income beneficiary (total--15 points):

(I) the TxCDBG cost per low to moderate income beneficiary is at least 50 percent below the median cost per beneficiary of all eligible applicants (15 points); or

(II) the TxCDBG cost per low to moderate income beneficiary is at or below the median cost per beneficiary of all eligible applicants (10 points); or

(III) the TxCDBG cost per low to moderate income beneficiary is below 150 percent of the median cost per beneficiary of all eligible applicants (7 points); or

(IV) the TxCDBG cost per low to moderate income beneficiary is 150 percent or greater than the median cost per beneficiary of all eligible applicants (5 points).

(ii) Amount requested originally appears to be reasonable and relates to the described needs with respect to the location and characteristics of the proposed target area (up to 15 points).

(G) the availability of grant funds to the applicant for project financing from other sources (total--6 points) The area would be eligible for funding under the Texas Water Development Board's Economically Distressed Areas Program (EDAP) or other programs as described in the original application; and

(H) the applicant's past performance on prior TxCDBG contracts. An applicant can receive from zero to twelve points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's two most recent TxCDBG contracts that have reached the end of the original contract period stipulated in the contract. The TxCDBG may also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG grant award will automatically receive these points. The TxCDBG will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance may include, but is not necessarily limited to the following:

(i) The applicant's completion of the previous contract activities within the original contract period (up to 3 points).

(ii) The applicant's submission of the required close-out documents within the period prescribed for such submission (up to 3 points).

(iii) The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs (up to 3 points).

(iv) The applicant's timely response to audit findings on previous TxCDBG contracts (up to 3 points).

(4) Matching funds (total--20 points). The population category under which county applications are scored is based on the actual number of beneficiaries to be served by the colonia planning activities.

(A) Applicants with populations equal to or less than 1,500 according to the 2000 census:

(i) match equal to or greater than 5.0% of grant request--20;

(ii) match at least 2.0% but less than 5.0% of grant request--10;

(iii) match less than 2.0% of grant request--0.

(B) Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census:

(i) match equal to or greater than 10% of grant request--20;

(ii) match at least 2.5% but less than 10% of grant request--10;

(iii) match less than 2.5% of grant request--0.

(C) Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census:

(i) match equal to or greater than 15% of grant request--20;

(ii) match at least 3.5% but less than 15% of grant request--10;

(iii) match less than 3.5% of grant request--0.

(D) Applicants with populations over 5,000 according to the 2000 census:

(i) match equal to or greater than 20% of grant request--20;

(ii) match at least 5.0% but less than 20% of grant request--10;

(iii) match less than 5.0% of grant request--0.

(h) Selection criteria (colonia comprehensive planning fund). The following is an outline of the selection criteria used by the Office for scoring applications for eligible planning activities under this fund. Two hundred points are available.

(1) Community distress (total--25 points). All community distress factor scores are based on the unincorporated population of the applicant. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

(A) Percentage of persons living in poverty--10 points

(B) Per capita income--5 points

(C) Percentage of housing units without complete plumbing--5 points

(D) Unemployment Rate--5 points

(2) Project design (total--175 points). A colonia planning fund application must receive a minimum score for the project design selection factor of at least 70 percent of the maximum number of points available under this factor to be considered for funding. A more detailed description on the assignment of points under the project design scoring is included in the application guide for this fund. Each application is scored by the Office staff using the following information submitted in the application:

(A) the severity of need for the comprehensive colonia planning effort and how effectively the proposed comprehensive planning effort will result in a useful assessment of colonia populations, locations, infrastructure conditions, housing conditions, and the development of short-term and long-term strategies to resolve the identified needs (total--140 points);

(i) Evidence of severity of need as described in originally received application (total--10 points).

(ii) Population (total--10 points). The change in county population from 1990 and 2000 is between:

(I) greater than 5% but less than or equal to 10% (2 points).

(II) greater than 10% but less than or equal to 15% (4 points).

(III) greater than 15% but less than or equal to 20% (6 points).

(IV) greater than 20% but less than or equal to 25% (8 points).

(V) greater than 25% (10 points).

(iii) the county population in 2000 (total--10 points):

(I) the county population is at least 50 percent below the median county population of all eligible applicants (10 points).

(II) the county population is at or below the median county population of all eligible applicants (7 points).

(III) the county population is below 150 percent of the median county population of all eligible applicants (5 points).

(IV) the county population is 150 percent or greater than the median county population of all eligible applicants (2 points).

(iv) Needs are clearly identified in original application by priority through a community needs assessment (total--5 points);

(v) Evidence provided in the original application of strong citizen input or known citizen involvement in addressing need (total--5 points);

(vi) Evidence provided in the original application of effort to notify special groups to solicit information on severity of need (total--5 points);

(vii) Evidence provided in the original application that the public hearings to solicit input on needs were performed as described in the application guide (total--5 points);

(viii) Proposed planning efforts as described in the application are clear, concise and reasonable (total--10 points).

(ix) Proposed planning efforts as described in the application match the needs in the target area (total--25 points).

(x) Evidence in the application that the county is organized to implement the plan or would ensure that the plan is implemented (total--20 points).

(xi) The description of planning activity in the original application:

(I) Describes eligible activities (total--5 points).

(II) Describes understanding of plan process (total--5 points).

(III) Addresses identified needs (total--5 points).

(IV) Appears to result in solution to problems (total--5 points).

(V) Indicates a strategy that can be implemented (total--5 points).

(xii) Considering the applicant's probable capability, the Colonia Questionnaire in the original application indicates an attempt to control problems and the original submission was complete (total--10 points).

(B) the extent to which any previous planning efforts for colonia areas have been implemented (total--10 points). Applicant was a previous recipient of Colonia Planning Funds and some implementation of previously funded activities or special or extenuating circumstances prohibiting implementation exist. Points will be awarded if applicant is not a previous recipient of a Colonia Planning Fund award. Points will not be awarded if applicant did not implement previously funded activities and no special or extenuating circumstances prohibiting implementation existed;

(C) whether the applicant provides any local matching funds for project activities. (total--13 points). The population category under which county applications are scored is based on the actual number of beneficiaries to be served by the colonia planning activities;

(i) Applicants with populations equal to or less than 1,500 according to the 2000 census:

(I) match equal to or greater than 5.0% of grant request--13;

(II) match at least 2.0% but less than 5.0% of grant request--7;

(III) match less than 2.0% of grant request--0.

(ii) Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census:

(I) match equal to or greater than 10% of grant request--13;

(II) match at least 2.5% but less than 10% of grant request--7;

(III) match less than 2.5% of grant request--0.

(iii) Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census:

(I) match equal to or greater than 15% of grant request--13;

(II) match at least 3.5% but less than 15% of grant request--7;

(III) match less than 3.5% of grant request--0.

(iv) Applicants with populations over 5,000 according to the 2000 census:

(I) match equal to or greater than 20% of grant request--13;

(II) match at least 5.0% but less than 20% of grant request--7;

(III) match less than 5.0% of grant request--0; and

(D) the applicant's past performance on previously awarded TxCDBG contracts. An applicant can receive from zero to twelve points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's two most recent TxCDBG contracts that have reached the end of the original contract period stipulated in the contract. The TxCDBG may also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG grant award will automatically receive these points. The TxCDBG will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance will include, but is not necessarily limited to the following:

(i) The applicant's completion of the previous contract activities within the original contract period (up to 3 points).

(ii) The applicant's submission of the required close-out documents within the period prescribed for such submission (up to 3 points).

(iii) The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs (up to 3 points).

(iv) The applicant's timely response to audit findings on previous TxCDBG contracts (up to 3 points).

(i) Program guidelines (colonia self-help centers fund). The colonia self-help centers fund is administered by the Texas Department of Housing and Community Affairs (TDHCA) under an interagency agreement with the Office. The following is an outline of the administrative requirements and eligible activities under this fund.

(1) The geographic area served by each colonia self-help center shall be determined by the Office or by the TDHCA. Five colonias located in each established colonia self-help center service area shall be designated to receive concentrated attention from the center. Each colonia self-help center shall set a goal to improve the living conditions of the residents located in the colonias designated for concentrated attention within a two-year period set under the contract terms. The Office and the TDHCA have the authority to make changes to the colonias designated for this concentrated attention.

(2) The Office's grant contract for each colonia self-help center is awarded and executed with the county where the colonia self-help center is located. Each county executes a subcontract agreement with a non-profit community action agency or a public housing authority.

(3) A colonia advisory committee is established and not fewer than five persons who are residents of colonias are selected from the candidates submitted by local nonprofit organizations and the commissioners court of a county where a self-help center is located. One committee member shall be appointed to represent each of the counties in which a colonia self-help center is located. Each committee member must be a resident of a colonia located in the county the member represents but may not be a board member, contractor, or employee of or have any ownership interest in an entity that is awarded a contract through the TxCDBG. The advisory committee shall advise the Office and the TDHCA regarding:

(A) the needs of colonia residents;

(B) appropriate and effective programs that are proposed or are operated through the centers; and

(C) activities that may be undertaken through the centers to better serve the needs of colonia residents.

(4) The purpose of each colonia self-help center is to assist low income and very low income individuals and families living in colonias located in the center's designated service area to finance, refinance, construct, improve or maintain a safe, suitable home in the designated service area or in another suitable area. Each self-help center may serve low income and very low income individuals and families by:

(A) providing assistance in obtaining loans or grants to build a home;

(B) teaching construction skills necessary to repair or build a home;

(C) providing model home plans;

(D) operating a program to rent or provide tools for home construction and improvement for the benefit of property owners in colonias who are building or repairing a residence or installing necessary residential infrastructure;

(E) helping to obtain, construct, assess, or improve the service and utility infrastructure designed to service residences in a colonia, including potable water, wastewater disposal, drainage, streets and utilities;

(F) surveying or platting residential property that an individual purchased without the benefit of a legal survey, plat, or record;

(G) providing credit and debt counseling related to home purchase and finance;

(H) applying for grants and loans to provide housing and other needed community improvements;

(I) monthly programs to educate individuals and families on their rights and responsibilities as property owners;

(J) providing other eligible services that the self-help center, with the Office's approval, determines are necessary to assist colonia residents in improving their physical living conditions, including help in obtaining suitable alternative housing outside of a colonia's area;

(K) providing assistance in obtaining loans or grants to enable an individual or family to acquire fee simple title to property that originally was purchased under a contract for a deed, contract for sale, or other executory contract; and

(L) providing access to computers, the internet, and computer training.

(5) A self-help center may not provide grants, financing, or mortgage loan services to purchase, build, rehabilitate, or finance construction or improvements to a home in a colonia if water service and suitable wastewater disposal are not available.

(j) Selection criteria (colonia EDAP fund). The following is an outline of the application information evaluated by a committee composed of the Office's staff.

(1) The proposed use of the colonia EDAP funds including the eligibility of the proposed activities and the effective use of the funds to provide water or sewer connections/yard lines to water/sewer systems funded through the Texas Water Development Board Economically Distressed Area Program.

(2) The ability of the applicant to utilize the grant funds in a timely manner.

(3) The availability of grant funds to the applicant for project financing from other sources.

(4) The applicant's past performance on previously awarded TxCDBG contracts.

(5) Cost per beneficiary.

(6) Proximity of project site to entitlement cities or metropolitan statistical areas.

§255.10. Housing Fund.

(a) General provisions. Two separate fund categories are available under the housing fund. The housing infrastructure fund is available for public facilities and infrastructure improvements supporting the development and construction of single family and multifamily low to moderate income housing. The housing infrastructure funds may not be used for the actual construction cost of new housing. The housing rehabilitation fund is available for the rehabilitation or existing owner-occupied and renter-occupied housing units and, in strictly limited circumstances, the construction of new housing that is accessible to persons with disabilities. The housing rehabilitation fund selection criteria places emphasis on housing activities that provide accessible housing for persons with disabilities.

(1) An applicant may not submit an application under this fund and also under any other TxCDBG fund category at the same time if the proposed activity under each application is the same or substantially similar.

(2) Each applicant must meet the threshold requirements of §255.1(h) and (n) of this title (relating to General Provisions), in order to be eligible to apply for housing fund assistance.

(3) In order to meet a national program objective under the housing infrastructure fund, at least 51% of the housing units built in conjunction with each housing infrastructure fund project must be occupied by low to moderate income persons. In the case of a rental housing construction project, occupancy by low to moderate income persons must be at affordable rents. TxCDBG funds can be used to finance 100% of the eligible project costs when at least 51% of the units are occupied by low to moderate income persons.

(4) There is only one type of housing infrastructure fund project that may qualify for assistance when less than 51% of the units will be occupied by low to moderate income persons. Eligible assistance may also be provided to reduce the cost of new construction of a multifamily non-elderly rental housing project. However, at least 20% of the units must be occupied by persons of low to moderate income at affordable rents. For this type of project, the maximum percentage of TxCDBG funds available for the eligible project costs is equal to the percentage of the project's units that are occupied by persons of low to moderate income at affordable rents.

(5) A housing rehabilitation fund applicant must document that at least 51% of the persons who would directly benefit from the implementation of housing activities proposed in the application are of low to moderate income. It is generally expected that 100% of the persons benefiting from the housing activities will be low to moderate income persons.

(b) Eligible activities (housing infrastructure fund). The only eligible activities under the housing infrastructure fund are:

(1) The provision of public facilities improvements supporting the development of the low to moderate income housing.

(2) Engineering costs associated with the public facilities improvements.

(3) Administrative costs associated with the site clearance, site improvements and public facilities improvements.

(4) Eligible projects must leverage public (local, state, or federal) or private resources for the actual housing construction costs and any other project costs that are not eligible for assistance under this fund.

(c) Funding cycle (housing infrastructure fund). This fund is allocated on an annual basis to eligible units of general local government through a statewide competition. Applications for funding must be received by the TxCDBG by the application deadline date or dates specified in the application guide for this fund.

(d) Eligible activities (housing rehabilitation fund). Housing units rehabilitated under this fund must be brought up to HUD Section 8 Existing Housing Quality Standards or local housing codes. The only eligible activities under the housing rehabilitation fund are:

(1) Loan or deferred loan assistance for the rehabilitation of owner-occupied or renter-occupied housing units that are inhabited by persons with disabilities or that will be occupied by persons with disabilities after completion of the housing unit rehabilitation. Rehabilitated housing units must include any improvements necessary to make the housing unit accessible to persons with disabilities.

(2) Loan or deferred loan assistance for the rehabilitation of owner-occupied housing units that are not inhabited by persons with disabilities.

(3) Loan or deferred loan assistance for the construction of new housing units that include accessibility features for persons with disabilities. Construction of new housing must be provided through an eligible subrecipient such as a neighborhood-based non-profit organization or a non-profit organization serving the development needs of the TxCDBG-eligible community. In this instance, the applicant must provide documentation that confirms a need for a housing unit or units, that are accessible to persons with disabilities; and that there is no existing housing currently available in the applicant's jurisdiction that can satisfy or meet the documented need.

(4) Soft costs associated with the delivery of the housing program assistance including the preparation of work write-ups; required architectural or professional services that are directly attributable to a particular housing unit; interim and final inspections; and inspections for lead-based paint, asbestos, termites, and existing septic systems.

(5) Administrative costs associated with the housing assistance program.

(6) TxCDBG assistance for the hard costs of housing assistance is limited to no more than $25,000 per housing unit. The cost of replacement housing can exceed this $25,000 limit.

(e) Funding cycle (housing rehabilitation fund). This fund is allocated to eligible units of general local government on a biennial basis for the 2003 and 2004 program years pursuant to a statewide competition held during the 2003 program year. Applications for funding from the 2003 and 2004 program year allocations must be received by the TxCDBG by the dates and times specified in the most recent application guide for this fund.

(f) Selection procedures (housing rehabilitation fund).

(1) Each eligible local government may submit one application for funding under the housing rehabilitation fund. Two copies of the application must be submitted to the Office and at least one copy of the application must be submitted to the applicant's state planning region.

(2) Upon receipt of an application, the Office staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified by the Office staff in the timeframe stated in the notification.

(3) Each regional review committee may, at its option, review and comment on an application from a local government within its state planning region. These comments become part of the application file, provided such comments are received by the Office prior to final review of an application.

(4) The Office then scores the housing rehabilitation fund to determine rankings. Scores on the selection factors are derived from standardized data from the Census Bureau, other federal or state sources, and from information provided by the applicant.

(5) Following a final technical review, the Office staff submits the 2003 program year and 2004 program year funding recommendations to the executive director of the Office.

(6) The executive director of the Office reviews the 2003 program year funding recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(7) Upon announcement of the 2003 program year contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(8) When the 2004 program year TxCDBG allocation becomes available, the executive director of the Office reviews the 2004 program year final recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(9) Upon announcement of the 2004 program year contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.

(g) Selection criteria (housing rehabilitation fund). The following is an outline of the selection criteria used by the Office for scoring applications under this fund. Two hundred points are available.

(1) Community distress (total--25 points). All community distress factor scores are based on the population of the applicant. For counties, the population may include the unincorporated county population and the populations of any cities located in the county participating in the application.

(A) Percentage of persons living in poverty--15

(B) Per capita income--10

(2) Project design (total--175 points). Each application is scored by a committee composed of the Office staff using the following information submitted in the application:

(A) how the proposed project will resolve the identified housing needs and the severity of the needs within the applicant's jurisdiction;

(B) whether the application includes a commitment to rehabilitate existing housing units addressing the needs of persons with disabilities (applications that include housing activities providing accessible housing for persons with disabilities receive additional consideration);

(C) whether the applicant provides any local matching funds for the administration or service delivery soft costs activities; and

(D) the applicant's past performance on previously awarded TxCDBG contracts.

(h) Selection procedures (housing infrastructure fund).

(1) Each eligible local government may submit one application for funding under the housing infrastructure fund. Two copies of the application must be submitted to the Office and at least one copy of the application must be submitted to the applicant's state planning region.

(2) Upon receipt of an application, the Office staff review the application to determine whether it is complete, if all proposed activities are program eligible, and if the project is financially feasible. If not subject to disqualification, the applicant may correct any deficiencies identified by the Office staff in the timeframe stated in the notification.

(3) After review by Office staff, each application is evaluated by a team of reviewers. Reviewer's scores are averaged for a final team score and applications recommended for funding are forwarded to the executive director of the Office.

(4) The executive director of the Office reviews the funding recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(5) Upon announcement of the contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased.

(i) 2003 program year selection criteria (housing infrastructure fund). The following is an outline of the selection criteria used by the Office for scoring 2003 program year applications under this fund. One hundred seventy points are available.

(1) Financial feasibility (20 points).

(2) Market assessment (30 points).

(3) Affordable housing solutions (30 points).

(4) Organizational capacity (25 points).

(5) Program consideration (35 points).

(6) Project design (10 points).

(7) Community support (10 points).

(8) Rural project (10 points). Project is located in a community with a population of 10,000 persons or less.

(j) 2004 program year selection criteria (housing infrastructure fund). Within the selection criteria described in paragraphs (1) - (9) of this subsection, different factors may be evaluated for single family projects and multi-family projects. These different selection criteria factors will be described in the application guide for the program. The following is an outline of the selection criteria used by the Office for scoring 2004 program year applications under this fund. One hundred seventy (170) points are available. Applications determined not to be financially feasible will be eliminated from funding consideration. Any such application will not be reviewed any further and the applicant will be notified that the application lacked sufficient financial feasibility.

(1) Market assessment (60 points). The market assessment will be scored based on housing market information, realtor information, census data provided, public housing authority waiting lists, project site information, and other information in the application.

(A) Documented market description. Maximum of 6 points for Single Family or Multi-Family.

(B) Documented analysis of market trends. Maximum of 6 points for Single Family or Multi-Family.

(C) Evaluation and understanding of the local housing needs. Maximum of 6 points for Single Family or Multi-Family.

(D) Ability of the market to absorb the proposed number of homes/units. Maximum of 6 points for Single Family or Multi-Family.

(E) Project location in terms of commercial and social services, and appropriateness and general appeal of site. Maximum of 6 points for Single Family or Multi-Family.

(F) An occupancy rate of 90 percent or higher exists in the community where the housing project is located. Maximum of 6 points for Single Family or Multi-Family.

(G) New industry/businesses in the area have created jobs that have increased the need for affordable housing. Maximum of 6 points for Single Family or Multi-Family.

(H) No existing TxCDBG funded Housing Infrastructure project is located within 50 miles of the proposed project site. Maximum of 6 points for Single Family or Multi-Family.

(I) The market assessment has been prepared by an independent party other than the locality's staff or application preparer. Maximum of 6 points for Single Family or Multi-Family.

(J) Other factors that demonstrate a need for additional housing in the area such as an increase in the cost of housing, lack of affordable housing, and major transportation changes. Maximum of 6 points for Single Family or Multi-Family.

(2) Affordable housing solutions (20 points).

(A) Degree that project includes housing located in stable neighborhoods for the targeted population. This is determined by TxCDBG during its site visit assessment. Maximum of 5 points for Single Family or Multi-Family.

(B) Affordability of project to individuals with 80%, 60% or 50% area median family income. Maximum of 5 points for Single Family or Multi-Family.

(i) Project encompasses units affordable to families with 80 percent, 60 percent and 50 percent of area median family income--5 points.

(ii) Project encompasses units affordable to families with 80 percent and 60 percent of area median family income--3 points.

(iii) Project encompasses units affordable to families with 80 percent of area median family income--1 point.

(C) Availability of down-payment and closing cost assistance. Maximum of 5 points for Single Family.

(D) Availability of homebuyer counseling services. Maximum of 5 points for Single Family.

(E) Support Services Plan of resident services available to tenants. Maximum of 10 points for Multi-Family.

(3) Organizational capacity (15 points).

(A) Experience and capacity of the developer and applicant (in relation to the scale of the project). Maximum of 10 points for Single Family or Multi-Family.

(B) Readiness to proceed. Score will consider financial commitments, evidence of zoning, options on land, and other evidence that the project will not encounter delays upon receipt of program funds. Maximum of 5 points for Single Family or Multi-Family.

(4) Program consideration and matching funds (20 points).

(A) Program Consideration. Maximum of 10 points for Single Family or Multi-Family.

(i) Descriptions of how proposed project will resolve the identified need and the severity of the need within the jurisdiction--up to 5 points.

(ii) Minimal displacement, relocation, site acquisition, and clearance costs--up to 1 point.

(iii) Adequacy of community infrastructure and services in relation to the project site--up to 2 points.

(iv) Description of applicant's other efforts to provide affordable housing in the community--up to 2 points.

(B) Financial commitment from local government (local contribution). Maximum of 5 points for Single Family or Multi-Family.

(i) Local government has provided a contribution in the amount of 2 percent of the fund grant amount requested--5 points.

(ii) Local government has provided a contribution in the amount of 1 percent of the fund grant amount requested--3 points.

(iii) Local government has not provided a contribution--0 points.

(C) Adequacy of community infrastructure in relation to the project. Maximum of 5 points for Single Family or Multi-Family.

(5) Applicant has not received a previous housing infrastructure fund contract (5 points).

(6) Project design (10 points). Maximum of 10 points for Single Family or Multi-Family.

(A) Maximum of 5 points for creative housing designs that incorporate cost-effectiveness, practicality, and security without compromising comfort, attractiveness, and privacy, as well as a variety of floor plans and elevations.

(B) Maximum of 2 points for housing units that incorporate energy efficient construction and appliances.

(C) Maximum of 2 points for projects that incorporate a main entrance to the proposed subdivision that enhances the visual appeal of the property.

(D) Maximum of 1 point for applications from governing bodies of communities designated as defense economic readjustment zones over other eligible applications for TxCDBG grants if at least fifty percent (50%) of the grant will be expended for the direct benefit of the readjustment zone and the purpose of the grant is to promote TxCDBG-eligible economic development in the community or for TxCDBG-eligible construction, improvement, extension, repair, or maintenance of TxCDBG-eligible public facilities in the community.

(7) Community support (20 points).

(A) Community awareness of the project as demonstrated by support letters and newspaper articles. Maximum of 10 points for Single Family or Multi-Family.

(B) Financial commitments from other sources (leveraging). Greater weight will be provided for financial commitments from within the community for the project. Maximum of 10 points for Single Family or Multi-Family.

(8) Cost per beneficiary (10 points). Single Family and Multi-Family applications will be considered separately. The beneficiaries used in this determination will be based on the number of units proposed and the assumption that a family of four will occupy a single family unit or multi-family unit.

(A) the TxCDBG cost per beneficiary is at least 50 percent below the calculated median cost per beneficiary of all eligible applicants within the respective single or multi-family category (10 points);

(B) the TxCDBG cost per beneficiary is at or below the calculated median cost per beneficiary of all eligible applicants within the respective single or multi-family category (7 points);

(C) the TxCDBG cost per beneficiary is below 150 percent of the calculated median cost per beneficiary of all eligible applicants within the respective single or multi-family category (5 points); or

(D) the TxCDBG cost per beneficiary is 150 percent or greater than the calculated median cost per beneficiary of all eligible applicants within the respective single or multi-family category (2 points).

(9) Rural project (10 points). Project is located in a community with a population of 10,000 persons or less--10 points.

(k) Principal residence requirement (housing infrastructure fund). Each resident must be one that, at the time the mortgage loan is executed, the borrower reasonably expects to become his or her principal residence within a reasonable time (not to exceed 60 days) after the financing is provided. Whether a residence is occupied as a principal residence depends upon all the facts and circumstances of each case, including the good faith of the borrower. A residence that is intended to be used primarily in a trade of business will not satisfy the principal residence requirement. Further, a residence that will be used as an investment property or a recreational home does not satisfy the principal residence requirement.

§255.11. Small Towns Environment Program Fund.

(a) General provisions. This fund is available to eligible units of general local government to provide financial assistance to cities and communities that are willing to address water and sewer needs through self-help methods that are encouraged and supported by the Small Towns Environment Program (STEP). The self-help method for addressing water and sewer needs is best utilized by cities and communities recognizing that conventional water and sewer financing and construction methods cannot provide an affordable response to the water or sewer needs. By utilizing a city's or community's own resources (human, material, and financial), the costs for the water or sewer improvements can be reduced significantly from the retail costs of the improvements through conventional construction methods. Participants in the small town environment program fund should attain at least a forty percent reduction in the costs of the water or sewer project by using self-help in lieu of conventional financing and construction methods.

(1) Small towns environment program funds can be used to cover material costs, certain engineering costs, administrative costs, and other necessary project costs that are approved by program staff.

(2) In addition to the threshold requirements of §255.1(h) and (n) of this title (relating to General Provisions), in order to be eligible to apply for small towns environment program funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(3) Cities and counties receiving 2007 and 2008 Community Development Fund/Community Development Supplemental Fund grant awards for applications that do not include water, sewer, or housing activities are not eligible to receive a 2008 grant award from this fund. However, the Office may consider a city's or county's request to transfer funds that are not financing water, sewer, or housing activities under a 2007 or 2008 Community Development Fund/Community Development Supplemental Fund grant award to finance water and sewer activities that will be addressed through self-help methods.

(b) Eligible activities. For the small towns environment program fund eligible activities are limited to the following:

(1) The installation of facilities to provide first-time water or sewer service.

(2) The installation of water or sewer system improvements.

(3) Ancillary repairs related to the installation of water and sewer systems or improvements.

(4) The acquisition of real property related to the installation of water and sewer systems or improvements (easements, rights of way, etc.).

(5) Sewer or water taps and water meters.

(6) Water or sewer yard service lines (for low and moderate income persons).

(7) Water or sewer house service connections (for low and moderate income persons).

(8) Plumbing improvements associated with providing water or sewer service to a housing unit.

(9) Water or sewer connection fees (for low and moderate income persons).

(10) Equipment for installation of water or sewer if justification is provided.

(11) Reasonable associated administrative costs.

(12) Reasonable associated engineering services costs.

(c) Ineligible activities. Any activity not described in subsection (b) of this section is ineligible under this fund unless the activity is approved by the TxCDBG. Other ineligible activities are temporary solutions, such as emergency inter-connects that are not used on an on-going basis for supply or treatment and back-ups not required by the regulations of the Texas Commission on Environmental Quality. The TxCDBG will not reimburse for force account work for construction activities on the STEP project.

(d) Funding cycle. Applications are accepted three times a year as long as funds are available. Funds will be divided among the three application periods. After all projects are ranked, only those that can be fully funded will be awarded a grant. There will be no marginally funded grant awards. The TxCDBG will not accept an application for STEP fund assistance until TxCDBG staff and representatives of the potential applicant have evaluated the self-help process and TxCDBG staff determine that self-help is a feasible method for completion of the water or sewer project, the community is committed to self-help as the means to address the problem, and the community is ready and has the capacity to begin and complete a self-help project. If it is determined that the community meets all of the STEP criteria then an invitation to apply for funds will be extended to the community and the application may be submitted.

(e) Threshold criteria. The self-help response to water and sewer needs may not be appropriate in every community. In most cases, the decision by a community to utilize self-help to obtain needed water and sewer facilities is based on the community's realization that it cannot afford even a "no frills" water or sewer system based on the initial construction costs and the operations/maintenance costs (including debt service costs) for water or sewer facilities installed through conventional financing and construction methods. The following are threshold requirements for the STEP framework: Without all these elements the project may not be considered under the STEP fund.

(1) The community receiving benefits from the project must have one or more sparkplugs (preferably three). Sparkplugs are local leaders willing to both lead and sustain the effort to complete the project. While local officials may serve as sparkplugs, at least two of the three sparkplugs must be residents and not local officials. One of the sparkplugs should have the skills necessary to maintain the paperwork needed for the project. One of the sparkplugs should have knowledge or skills necessary to lead the self-help effort, and one sparkplug can have a combination of these skills or just be the motivator and problem solver of the group.

(2) The community receiving benefits from the project should exhibit a readiness to proceed with the project. The community's readiness to proceed is based on a strong local perception of the problem and the willingness to take action to solve the problem. A community's readiness to proceed is shown when the following conditions exist:

(A) A strong local perception of the problem exists.

(B) The community has the perception that local implementation is the best and maybe only solution to the problem.

(C) The residents of the community have confidence that they can adequately complete the project.

(D) The community has no strong competing priority.

(E) The local government is supportive of the effort and understands the urgency.

(F) There exists a public and private willingness to pay additional costs if needed such as fees, hook-ups for churches, and other costs.

(G) Some effort and attention have already been given to local assessment of the problem.

(H) There is enthusiastic, capable support for the community from the county or regional field staff of any regulatory agency involved with solutions to the problem.

(3) The community receiving benefits from the project should have the capacity and manpower with the skills needed to complete the project. The capacity and skills to complete the project include the following:

(A) Skilled workers within the community such as an electrician, plumber, engineer water system operator and persons with experience operating heavy equipment, and persons with construction skills and pipe laying experience.

(B) The community has a list of volunteers that includes the tasks that are assigned to each volunteer.

(C) The community has equipment that will be needed to complete the project.

(D) The community has letters stating support from local businesses in form of donation of supplies or manpower.

(E) The community has letter from the water and/or sewer service provider supporting the project and agreeing to provide service.

(F) A letter from a Certified Public Accountant documenting that applying locality has financial and management capacity to compete project.

(4) The community receiving benefits from the project must be able to show that by completing the proposed project through self-help volunteer methods the community can achieve at least a 40% savings off the retail price of completing the same project through the bid/contract process. The information provided to the TxCDBG to document the reduced project cost through self-help includes the following:

(A) Two engineering break-outs of cost, one that shows the retail construction cost and another that shows the self-help cost and demonstrates the 40% savings.

(B) Documents containing material prices and pledges of equipment.

(C) A list of the volunteers by project completion task.

(D) A determination of appropriate technology for the project and the feasibility of project through a letter from an engineer.

(5) Project work, except for any contract administrative activities or engineering services activities, must be performed predominately by community volunteer workers.

(f) Selection procedures.

(1) During each of the two application rounds, the Office staff initially evaluate eligible cities or counties that have expressed an interest in using the self-help method and potentially applying for funding under the STEP Fund. Office staff assess whether self-help is a feasible method for completion of the water or sewer project, the community is committed to self-help as the means to address the problem, and the community is ready along with having the capacity to begin and complete a self-help project. If Office staff determines that the community meets all of the STEP threshold criteria then the community is invited to apply prior to the application deadline.

(2) The Office will not accept an application under the STEP Fund unless this assessment and invitation process is followed.

(3) Applicants invited to apply under the STEP Fund are scored using the selection criteria to determine the ranking.

(4) Following a final technical review, the Office staff makes funding recommendations to the executive director of the Office.

(5) The executive director of the Office reviews the final recommendations and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(6) Upon announcement of contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(g) Selection criteria. The following is an outline of the selection criteria used by the Office for scoring applications under the STEP fund. One hundred twenty (120) points are available.

(1) Project impact (total--up to 60 points). When necessary, a weighted average is used to assign scores to applications which include activities in the different project impact scoring levels. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for engineering and administration, a percentage of the total TxCDBG construction dollars for each activity will be calculated. The percentage of the total TxCDBG construction dollars for each activity will then be multiplied by the appropriate project impact point level. The sum of these calculations will determine the composite project impact score. Factors that are evaluated by the TxCDBG staff in the assignment of scores within the predetermined scoring ranges for activities include, but are not limited to, how the proposed project will resolve the identified need and the severity of the need within the applying jurisdiction; and projects designed to bring existing services up to at least the state minimum standards as set by the applicable regulatory agency are generally given additional consideration. The different project impact scoring levels and scoring ranges within each level are:

(A) first time water and/or sewer service--up to 60--50 points

(B) water activities addressing drought conditions--up to 60--50 points

(C) activities addressing severe impact to a water system (imminent loss of well, transmission line, supply impact)--up to 60--50 points

(D) water and/or sewer activities addressing an imminent threat to health as documented by the Texas Commission of Environmental Quality or Department of State Health Services--60--50 points

(E) activities addressing documented severe water pressure problems--up to 50--40 points

(F) replacement of existing water or sewer lines that are not addressing activities described in subparagraphs (A) - (E) of this paragraph--up to 40--30 points

(G) all other proposed water and sewer projects that are not addressing activities described in subparagraphs (A) - (F) of this paragraph--up to 30--20 points

(2) STEP Characteristics, Merits of the Project, and Local Effort (total--up to 30 points). The TxCDBG staff will assess the proposal for the following STEP characteristics not scored in other factors:

(A) Degree work will be performed by community volunteer workers, including information provided on the volunteer work to total work;

(B) Local leaders (sparkplugs) willing to both lead and sustain the effort;

(C) Readiness to proceed--the local perception of the problem and the willingness to take action to solve it;

(D) Capacity--the manpower required for the proposal including skills required to solve the problem;

(E) Merits of the projects, including the severity of the need, whether the applicant sought funding from other sources, cost in TxCDBG dollars requested per beneficiary, etc.; and

(F) Local efforts being made by applicants in utilizing local resources for community development.

(3) Past participation and performance (total--up to 15 points). An applicant receives up to 15 points on the following two factors.

(A) Ten of the 15 points available are awarded to applicants that do not have a current TxCDBG STEP grant.

(B) An applicant can receive from zero to five points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will be primarily based on our assessment of the applicant's performance on the applicant's two most recent TxCDBG contracts that have reached the end of the original contract period stipulated in the contract. The TxCDBG may also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. Applicants that have never received a TxCDBG grant award will automatically receive these points. The TxCDBG will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance may include, but is not necessarily limited to the following:

(i) The applicant's completion of the previous contract activities within the original contract period (total--2 points).

(ii) The applicant's submission of all contract reporting requirements such as Quarterly Progress Reports, Certificates of Expenditures, and Project Completion Reports (total--1 point).

(iii) The applicant's submission of the required close-out documents within the period prescribed for such submission (total--1 point).

(iv) The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs and the applicant's timely response to audit findings on previous TxCDBG contracts (total--1 point).

(4) Percentage of savings off the retail price (total--up to 10 points). For STEP, the percentage of savings off of the retail price is considered a form of community match for the project. In STEP, a threshold requirement is a minimum of 40% savings off the retail price for construction activities. The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for beneficiaries for the entire county, the total population of the county is used. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county. For county applications addressing water and sewer improvements in unincorporated

areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the applicants according to the 2000 Census. An applicant can receive from zero to 10 points based on the following population levels and savings percentages:

(A) Communities with populations equal to or less than 1,500 according to the 2000 census:

(i) 55% or more savings--10

(ii) 50% - 54.99% savings--9

(iii) 45% - 49.99% savings--7

(iv) 41% - 44.99% Savings--5

(B) Communities with populations above 1,500 but equal to or less than 3,000 according to the 2000 census:

(i) 55% or more savings--10

(ii) 50% - 54.99% savings--8

(iii) 45% - 49.99% savings--6

(iv) 41% - 44.99% Savings--3

(C) Communities with populations above 3,000 but equal to or less than 5,000 according to the 2000 census:

(i) 55% or more savings--10

(ii) 50% - 54.99% savings--7

(iii) 45% - 49.99% savings--5

(iv) 41% - 44.99% Savings--2

(D) Communities with populations above 5,000 but less than 10,000 according to the 2000 census:

(i) 55% or more savings--10

(ii) 50% - 54.99% savings--6

(iii) 45% - 49.99% savings--3

(iv) 41% - 44.99% Savings--1

(E) Communities with populations that are 10,000 or above 10,000 according to the 2000 census:

(i) 55% or more savings--10

(ii) 50% - 54.99% savings--5

(iii) 45% - 49.99% savings--2

(iv) 41% - 44.99% Savings--0

(5) Benefit to low/moderate income persons (total--up to 5 points). Applicants are required to meet the 51 percent low/moderate-income benefit for each activity as a threshold requirement. Any project where at least 60 percent of the TxCDBG funds benefit low/moderate-income persons will receive 5 points.

§255.12. Microenterprise Fund.

(a) General provisions. This fund is available on an annual basis for funding from available program income through an annual statewide competition. Applications received by the application deadline are eligible to receive grant awards from available program income. An eligible community submits the application and must contract with a non-profit organization (economic development corporation, community development corporation, etc.) for the purpose of establishing a local loan program that directly assists for-profit microenterprise businesses. Proceeds from the repayment of the loans will be retained by the non-profit organization.

(b) Conditions. A microenterprise is a commercial enterprise that has five (5) or fewer employees, one (1) or more of whom owns the enterprise. The microenterprise receiving the loan assistance must commit to creating or retaining jobs that will not exceed a maximum cost of $25,000 per job. The jobs created or retained by the microenterprise must principally benefit low and moderate income persons. The funds cannot be used by the microenterprise for debt service, refinancing, or payment of the business owner's salaries.

(c) Eligible activities. The activities eligible under this fund are:

(1) Working capital (purchase of raw materials, inventory, rent, utilities, salaries, and others needed for business operations);

(2) Machinery and equipment (cars and trucks considered rolling stock would not be an eligible use of funds); and

(3) Real estate improvements.

(d) Selection criteria. The following is an outline of the selection criteria used by the Office for scoring microenterprise fund applications. One hundred twenty (120) points are available. Additional information on the selection criteria may be provided in the application guide.

(1) Community Distress (total--50 points). All community distress factor scores are based on the population of the applicant. For counties, the population may include the unincorporated county population and the populations of any cities located in the county participating in the application. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

(A) Percentage Of Persons Living In Poverty (total--15 points).

(B) Per Capita Income (total--15 points).

(C) Population Loss from 1990 to 2000 (total--10 points).

(D) Unemployment Rate (total--10 points).

(2) Program Design (total--up to 50 points).

(A) Nonprofit Capacity. The score will be based on evidence in the application of the experience and/or capability of the contracted non-profit organization to administer a local business lending program, including the staff of the non-profit who will operate the fund (total--up to 10 points).

(B) Overall Program Design. The score will be based on design of the revolving loan program, including the application and selection process, credit analysis procedure, collection process, and other procedures necessary to sustain the long-term viability of the revolving loan fund (total--up to 10 points).

(C) Technical Assistance and Counseling Services. The score will be based on the magnitude and scope of the non-profit's pro-

posed technical assistance and counseling services for microenterprise businesses on operational, financial, marketing, and other business-related matters (total--up to 5 points).

(D) Citizen Involvement. The score will be based on degree of input on the design of the fund that has been solicited from the citizens in the region who could benefit from the fund (total--up to 5 points).

(E) Business Involvement. The score will be based on degree of input on the design of the fund from businesses, particularly potential applicants, in the region who could benefit from the fund. Consideration will be given for any business involvement in assisting in reviewing applications or providing technical assistance and counseling services (total--up to 5 points).

(F) Potential Applicants. If the application includes a list of the names of potential business applicants who met the eligibility requirements (total--up to 5 points).

(G) Marketing Plan. The score will be based on the plan submitted to market the availability of the revolving loan fund to potential microenterprise businesses in the region to be served (total--up to 5 points).

(H) Terms. The score will be based on whether the loan terms are consistent with the life of the security and risk factors (total--up to 5 points).

(3) Leverage Ratio (total--5 points). Score five points if matching dollars are greater than or equal to grant dollars received under this fund based on the following:

(A) For an applicant with a population in 2000 of less than 5,000 persons, the match is at least equal to 100 percent of the grant.

(B) For an applicant with a population in 2000 equal to or greater than 5,000 persons, the match is 125 percent of the grant.

(4) Previous Participation (total--10 points).

(A) If no previous Texas Capital Fund participation--10 points, or

(B) If no open Texas Capital Fund contracts--5 points.

(5) Rural Projects (total--5 points). Score five (5) points if:

(A) The applicant is a city with a population in 2000 under 10,000 persons, or

(B) The applicant is a county with a population in 2000 under 100,000 persons.

(6) An application must receive at least 25 points under Program Design to be considered eligible for funding consideration.

§255.13. Small Business Fund.

(a) General provisions. This fund is available on an annual basis for funding from available program income through an annual statewide competition. Applications received by the application deadline are eligible to receive grant awards from available program income. An eligible community submits the application for the purpose of supporting for-profit small businesses through loans meeting a gap financing need. Retention of the proceeds from the repayment of the loans will meet the same requirements for program income that apply to Texas Capital Fund contracts.

(b) Conditions. A small business is a for-profit business with less than 100 employees. The small business receiving the loan assistance must commit to creating or retaining jobs that will not exceed a maximum cost of $25,000 per job. The jobs created or retained by the small business must principally benefit low and moderate income persons. The funds cannot be used by the small business for debt service, refinancing, or payment of the business principal's salaries.

(c) Eligible activities. The activities eligible under this fund are:

(1) Working capital (purchase of raw materials, inventory, rent, utilities, salaries, and others needed for business operations);

(2) Machinery and equipment (cars and trucks considered rolling stock would not be an eligible use of funds); and

(3) Real estate improvements.

(d) Selection criteria. The following is an outline of the selection criteria used by the Office for scoring small business fund applications. One hundred twenty five (125) points are available. Additional information on the selection criteria may be provided in the application guide.

(1) Community Distress (total--up to 50 points). All community distress factor scores are based on the population of the applicant. For counties, the population may include the unincorporated county population and the populations of any cities located in the county participating in the application. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

(A) Percentage of Persons Living In Poverty (total--15 points).

(B) Per Capita Income (total--15 points).

(C) Population Loss from 1990 to 2000 (total--10 points).

(D) Unemployment Rate (total--10 points).

(2) Jobs (total--up to 20 points).

(A) Below $10,000 per job--20 points,

(B) Below $15,000 per job--15 points,

(C) Below $20,000 per job--10 points, or

(D) Below $25,000 per job--5 points.

(3) Project Feasibility (total--up to 30 points). The feasibility of each project is evaluated and scored based on the financial soundness of the project. Factors examined include:

(A) Firm commitments for financial investments. The score will be based on evidence in the application that financing from other sources, including owner equity, has been committed in sufficient amounts for the proposed project (total--up to 5 points);

(B) The jobs to be created or retained. The score will be based on evidence in the application that the type, skill, and wage of the proposed jobs to be created or retained is appropriate for the overall labor force in the area such as local employment data, surveys, or local, state or federal data (total--up to 5 points);

(C) The history of the business. The score will be based on either the success of the business over the last five years or, for new businesses, the history of the successful start-up period, including a discussion of the products, facilities, markets, job growth, and financial investments in the business (total--up to 3 points);

(D) The current financial condition of the business (including a full review of the credit analysis). The score will be based on whether the business has a sound balance sheet, including debt to equity ratios, and is currently profitable as demonstrated by recent income statements (total--up to 5 points);

(E) Cash flow projections. The score will be based on the detail and reasonableness of the projected cash flow statements for the proposed project (total--5 points);

(F) The business or marketing plan. The score will be based on evidence that the business has the capacity to sustain operations beyond the period of program assistance (total--up to 5 points); and

(G) Management. The score will be based on the experience and capabilities of the business owners and managers (total--up to 2 points).

(4) Leverage Ratio (total--5 Points) A minimum ten percent (10%) equity injection by the assisted business is required. Score five (5) points if matching dollars are greater than or equal to grant dollars received under this fund based on the following:

(A) For an applicant with a population in 2000 of less than 5,000 persons, the match is at least equal to 100 percent of the grant.

(B) For an applicant with a population in 2000 equal to or greater than 5,000 persons, the match is 125 percent of the grant.

(5) Previous Participation (total--10 points).

(A) If no previous Texas Capital Fund participation--10 points.

(B) If no open Texas Capital Fund contracts--5 points.

(6) Innovative Projects (total--5 points). Projects that support a business addressing a community need or economic/population trend would receive five points.

(7) Rural Projects (total--5 points). Score five points if:

(A) The applicant is a city with a population in 2000 under 10,000 persons, or

(B) The applicant is a county with a population in 2000 under 100,000 persons.

(8) An application must receive at least 15 points under Project Feasibility to be considered for funding.

§255.14. Section 108 Loan Guarantee Pilot Program.

(a) General Provisions. Section 108 is the loan guarantee provision authorized under section 108 of the Housing and Community Development Act (42 United States Code §§5301 et seq.). The loan is made by a private lender to an eligible community. The United States Department of Housing and Urban Development (HUD) guarantees the loan; however, TxCDBG must pledge the state's current and future Community Development Block Grant nonentitlement area funds to cover any losses. An eligible community would prepare a loan guarantee application for submission to HUD.

(b) Conditions. The following conditions apply under the TxCDBG Section 108 program:

(1) the Office will not provide a commitment for an application submitted to HUD for a Section 108 guarantee unless the Office has reviewed the application, conducted an underwriting analysis, and specifically recommended its approval;

(2) the Office will charge the eligible community receiving the Section 108 loan a non-refundable loan loss reserve fee at the rate of one percent per annum on the principal amount outstanding. The funds from the one percent fee would be used for any debt service payments the Office would need to pay on account of the loan, or to cover any loan losses, if the recipient does not make its Section 108 loan payments;

(3) the application must be only for an activity eligible under the TxCDBG;

(4) the Office will require the community to submit adequate information necessary to track all loan repayments made by any third party borrowers such as assisted businesses; and

(5) the Office will monitor compliance with program requirements.

(c) Eligible Activities.

(1) The project must meet a national objective of Housing and Community Development Act:

(A) principally benefit low- and moderate-income persons;

(B) aid in the elimination of slums or blight; or

(C) meet other community development needs of particular urgency which represent an immediate threat to the health and safety of residents of the community.

(2) In addition, the State program is specifically restricting eligibility to economic development activities eligible under the state Community Development Block Grant (CDBG) Program. Other activities eligible under the 24 Code of Federal Regulations Part 570 will not be eligible under the pilot phase of this program.

(d) Terms. The maximum repayment period for a Section 108 guaranteed loan under the TxCDBG will be twenty years. The TxCDBG will not establish a funded loss reserve. The Office anticipates entering into a Reimbursement Agreement with the community providing for recovery of amounts required to be paid by the TxCDBG. Should the TxCDBG be required to cover any Section 108 loan payments not made by the recipient of the loan guarantee, it would first use funds that have been collected from the additional one percent per annum fee charged on the loan.

(e) Pilot Program Application and Amount. In order to provide eligible communities an additional funding source, the TxCDBG is authorizing a loan guarantee pilot program consisting of one application up to a maximum of $500,000 for a particular project. Additional information on the selection criteria and underwriting thresholds will be provided in the application guide for applicants interested in being selected as the pilot project under this program.

(f) Application Review and Underwriting Analysis. The Office will review each complete application to make threshold determinations with respect to:

(1) whether the application meets the Section 108 eligibility requirements;

(2) whether the use of CDBG Section 108 loan guarantee funds is appropriate to carry out the project proposed in the application;

(3) the strength of commitments from all other public and/or private investments identified in the application;

(4) whether there is evidence that the permanent jobs created or retained will primarily benefit low-and-moderate income persons; and

(5) the financial feasibility of the business to be assisted, including reviews of appropriate projections of revenues, expenses, debt service and returns on equity investments in the project as described in subsection (g) of this section, Underwriting Analysis and Review, of this subsection. Generally, the project should demonstrate that it would generate a positive net present value of discounted cash flows.

(g) Underwriting Analysis and Review.

(1) Project costs are reasonable. The Office will review a breakdown of all project costs and that each cost element making up the project for reasonableness.

(2) Commitment of all project sources of financing. The Office will review all projected sources of financing necessary to carry out the economic development project to determine whether the proposal is ready to proceed. To the extent practicable, prior to the commitment of Section 108 CDBG funds to the project, the Office will verify that sufficient sources of funds have been identified to finance the project; all participating parties providing those funds have affirmed their intention to make the funds available; and the participating parties have the financial capacity to provide the funds.

(3) Avoid substitution of Section 108 CDBG funds for non-Federal financial support. The Office will review the economic development project to ensure that, to the extent practicable, CDBG funds will not be used to substantially reduce the amount of non-Federal financial support for the activity. The Office will review whether or not the business being assisted has applied for private debt financing from a commercial lending institution and whether that institution has completed all of its financial underwriting and loan approval actions resulting in either a firm commitment of its funds or a decision not to participate in the project.

(4) Financial feasibility of the project. The Office will evaluate the financial viability of the project. A project would be considered financially viable if:

(A) all of the assumptions about the project's market share, projections of revenue, projections of expenses, non-cash expenses, net income, and debt service, including the repayment of the Section 108 guaranteed loan, are determined to be realistic;

(B) it projects positive accumulated cash flow for the life of the project including cash from both operational and financial cash flows;

(C) it projects a debt service coverage ratio of 1.5 and cash flow coverage ratio of 1.25 by the 5th year; and

(D) it projects a return on equity by the 10th year of at least 400 basis points greater than the current rate for 30-year U.S. Treasury Bonds.

(5) Disbursement of Section 108 CDBG funds on a pro rata basis. To the extent practicable, the proceeds should be disbursed on a pro rata basis with other funding sources.

(h) Selection Criteria. Applications meeting threshold requirements of subsection (f) of this section will be scored based on the following:

(1) Community Need (Maximum of 30 points)

(A) Unemployment (maximum 10 points). Five points awarded if the applicant's unemployment rate is higher than the state rate, indicating that the community is economically below the state average. Ten points awarded if the applicant's most recently available unemployment rate is 1.5% over the state rate. (For cities, the most recently available city rate will be used; for counties, the most recently available county or census tract rate, for where the business site is located, whichever is higher, will be used).

(B) Poverty (maximum 10 points). Awarded if the applicant's most recently available annual county poverty rate is higher than the annual state rate, indicating that the community is economically below the state average. Applicants will score 5 points if their rate meets or exceeds the state average and score 10 points if this figure exceeds the state average by at least 15%.

(C) Community Population (more Rural) (maximum 10 points). Points are awarded to applying cities with populations of 5,050 or less and counties with a total population of 35,000 or less, using 2000 census data. For cities: score 5 points if the city is located in a county with a population of 35,000 or less; and score 5 additional points if the population of the city is less than 5,050. For counties: score 5 points if the county population is less than 35,000 and score 5 additional points if the county population is less than 15,350.

(2) Jobs (Maximum of 20 points).

(A) Job Impact (Jobs Created or Retained per Population of Community) (Maximum 10 points). Awarded by taking the Business' total job commitment, created and retained, and dividing by applicant's 2000 unadjusted population. This equals the job impact ratio. Score 5 points if this figure exceeds the median job impact ratio for prior years; and score 10 points if this figure exceeds 200% of the ratio. County applicants should deduct the 2000 census population amounts for all incorporated cities, except in the case where the county is sponsoring an application for a business that is or will be located in an incorporated city. In this case the city's population would be used, rather than the county's.

(B) Cost per Job (Maximum 10 points). Awarded by dividing the amount of Section 108 loan guarantee amount requested by the number of full-time job equivalents to be created and/or retained. Points are then awarded in accordance with the following scale:

(i) Below $15,000--10 points.

(ii) Below $20,000--5 points.

(3) In the event of a tie score and insufficient funds to approve all applications, the following tie breaker criteria will be used.

(A) The tying applications are ranked from lowest to highest based on poverty rate stated on the score sheet. Thus, preference is given to the applicant with the higher poverty rate.

(B) If a tie still exists after applying the first criteria then applications are ranked from lowest to highest based on unemployment rate stated on the score sheet. Thus, preference is then given to the applicant with the higher unemployment rate.

§255.15. Community Development Supplemental Fund.

(a) General provisions. Applications for there funds are submitted under the community development fund for eligible activities including but not limited to housing, public facilities, and public service projects. Eligible units of general local government may apply for funding of a single purpose project such as housing assistance, sewer improvements, water improvements, drainage, roads, or community centers, or for a multi-purpose project which consists of any combination of such eligible activities. An application submitted for the community development fund can receive a grant from the community development fund regional allocation and/or from the community development supplemental fund regional allocation.

(1) An applicant may not submit an application for community development supplemental funds under the community development fund and also under any other TxCDBG fund category at the same time if the proposed activity under each application is the same or substantially similar. An application submitted for the community development fund is also considered for the regional allocation for the community development supplemental fund.

(2) In addition to the threshold requirements of §255.1(h) and (n) of this title (relating to General Provisions), in order to be eligible to apply for community development funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(b) Funding cycle. Community development supplemental funds are allocated to eligible units of general local government on a biennial basis for the 2007 and 2008 program years pursuant to regional competitions held for the 2007 program year community development fund applicants. Applications for funding must be received by the TxCDBG by the dates and times specified in the most recent application guide for this fund.

(c) Allocation plan.

(1) Additional information on the allocation and distribution of community development supplemental funds is described in §255.2(c) of this title (relating to Community Development Fund). This fund is allocated among the 24 state planning regions established pursuant to Texas Local Government Code, §391.003, through the methodology and formulas used by the U.S. Department of Housing and Urban Development to allocate community development block grant funds to states. Each region receives an allocation for the 2007 and 2008 program years based on the higher amount derived from either of the two following formulas:

(A) Formula A includes the following factors and weights:

(i) population--25%

(ii) number of persons living in poverty--50%

(iii) number of overcrowded housing units--25%

(B) Formula B includes the following factors and weights:

(i) population--20%

(ii) number of persons living in poverty--30%

(iii) number of housing units built before 1940--50%

(2) The higher amount available for each regional allocation is determined through one of the two formulas. The higher amounts for each region are then added together and the total will exceed the total amount allocated for the community development supplemental fund. Each regional allocation is then adjusted downward by the same percentage to equal the total allocation for the community development supplemental fund. As an example, if the community development supplemental fund allocation was 4 million dollars and the total of the higher allocations for each of the 24 state planning regions was 5 million dollars, then each region would only receive 80% of its higher allocation amount calculated through one of the two formulas.

(d) Selection procedures.

(1) In general, both the Community Development (CD) Fund and Community Development Supplemental (CDS) Fund scores will be considered under the first year's CD and CDS allocation to provide an applicant the greater award amount in the first year of competition, whether from the anticipated CD or CDS allocations.

(2) Specifically, the Community Development Fund dollars for the first year will be allocated using the CD score until a marginal CD award amount remains for the anticipated first year allocation. A comparison will then be made to compare the preliminary first-year marginal CD applicant's CDS score with the remaining applicants and also if it could be offered a higher dollar award in the first year under the CDS Fund allocation. If its CDS score was higher than the next highest ranked applicant's CDS score and it would receive a higher award amount in the first year under the CDS allocation, it would be offered a first year CDS award. The remaining applicants would compete for the remaining CD and CDS first-year funds based on the method of providing the highest ranked applicants under the respective CD and CDS scoring criteria with the higher award amount, whether from the first year CD or CDS allocation.

(3) In the second year, the Community Development Fund marginal funds may be used in the second year to fund a non-fully funded Community Development Supplemental Fund application.

(4) If there are sufficient Community Development Supplemental Funds in the first year to fully fund an application, then the applicant may accept the amount available or wait for full funding in the second year by combining the two years.

(5) If there are insufficient Community Development Supplemental Funds in the two years to fully fund an application, then Community Development Fund marginal funds may be used to fully fund the application. If marginal funds are not available to fully fund the application, the applicant may accept the amount of the funds available or, if declined, the funds will be part of the marginal competition.

(6) Additional information on the selection procedures for the use of community development supplemental funds are described in §255.2(d) of this title.

(e) Selection criteria. The following is an outline of the selection criteria used by the Office and the regional review committees to determine the applicants that will receive community development supplemental funds. Three hundred sixty points are available.

(1) Other considerations (total--10 points). An applicant receives from zero to ten (10) points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will primarily be based on an assessment of the applicant's performance on the applicant's two (2) most recent TxCDBG contracts that have reached the end of the original contract period stipulated in the contract. TxCDBG staff may also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. An applicant that has never received a TxCDBG grant award will automatically receive these points. TxCDBG staff will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance on TxCDBG contracts after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance will include, but is not necessarily limited to the following:

(A) The applicant's completion of the previous contract activities within the original contract period.

(B) The applicant's submission of the required closeout documents within the period prescribed for such submission.

(C) The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs.

(D) The applicant's timely response to audit findings on previous TxCDBG contracts.

(E) The applicant's submission of all contract reporting requirements such as quarterly progress reports, certificates of expenditures, and project completion reports.

(2) Regional scoring factors (total--350 points). Each regional review committee shall use the following three factors to score applications in its region:

(A) Project priorities. Each regional review committee shall rank and assign points to categories of eligible activities based on the priority of such projects in the region. The first priority shall receive at least 100 points.

(B) Local effort. A minimum of 75 points shall be made available based on definitions and criteria adopted by each regional review committee. The regional review committee must establish the methods its members will use to score this factor, consistent with HUD regulations as determined by TxCDBG.

(C) Merits of the project. A maximum of 175 points shall be awarded based on definitions and criteria adopted by each regional review committee. The regional review committee must establish the methods its members will use to score this factor, consistent with HUD regulations as determined by TxCDBG.

§255.16. Non-Border Colonia Fund.

(a) General provisions. This fund covers the payment of assessments, access fees, and capital recovery fees for low and moderate income persons for eligible water and sewer improvements projects and all other program eligible activities with the exception of planning activities and economic development activities. This fund is available to eligible county applicants for projects in severely distressed unincorporated areas located farther than 150 miles from the Texas-Mexico border and non-entitlement counties, or portions of counties, within 150 miles of the Texas-Mexico border that are not eligible for the colonia fund because they are located in a standard metropolitan statistical area that has a population exceeding 1,000,000, as specified the Cranston-Gonzalez National Affordable Housing Act. Non-border colonia areas would be an identifiable unincorporated community that is determined to be colonia-like on the basis of objective criteria, including lack of potable water supply, lack of adequate sewage systems, and lack of decent, safe, and sanitary housing; and was in existence as a colonia before the date of the enactment of the Cranston-Gonzalez National Affordable Housing Act (November 28, 1990).

(1) An applicant may not submit a single jurisdiction application or a multi-jurisdiction application under this fund and also under any other TxCDBG fund category at the same time if the proposed activity under each application is the same or substantially similar.

(2) A nonentitlement county that is eligible for the colonia fund and that has only a portion of the county located within 150 miles of the Texas-Mexico border cannot submit an application for the non-border colonia fund for any unincorporated areas located within the portion of the county located within 150 mile Texas-Mexico border. However, the eligible nonentitlement count can submit an application under the non-border colonia fund for the unincorporated areas located outside of 150 miles of the Texas-Mexico border.

(3) In addition to the threshold requirements of §255.1(h) and (n) of this title (relating to General Provisions), in order to be eligible to apply for colonia funds, an applicant must document that at least 51% of the persons who would directly benefit from the implementation of each activity proposed in the application are of low to moderate income.

(b) Funding cycle. This fund is allocated to eligible counties on a biennial basis for the 2007 and 2008 program years pursuant to a competition held for the 2007 program year applicants. Applications for funding must be received by the TxCDBG by the dates and times specified in the most recent application guide for this fund.

(c) Selection procedures.

(1) Prior to the submission deadline specified in the most recent application guide for this fund, each eligible county may submit one application to the Office for funding under the non-border colonia funds. Two copies of the application must be submitted. Each applicant should also provide at least one copy of its application to the applicant's state planning region for review and comment.

(2) Upon receipt of an application, the Office staff performs an initial review to determine whether the application is complete and whether all proposed activities are eligible for funding, if ranked. The results of this initial review are provided to the applicant. If not subject to disqualification, the applicant may correct any deficiencies identified within 10 calendar days of the date of the staff's notification.

(3) Each regional review committee may, at its option, review and comment on a non-border colonia fund proposal from a jurisdiction within its state planning region. These comments will become part of the application file, provided such comments are received by the Office prior to scoring of the applications.

(4) The Office then scores the applications to determine rankings. Scores on the selection factors are derived from standardized data from the Census Bureau, other federal or state sources, and from information provided by the applicant.

(5) Following a final technical review, the Office staff submits the 2007 program year and 2008 program year funding recommendations to the executive director of the Office.

(6) The executive director of the Office reviews the 2007 program year funding recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(7) Upon announcement of the 2007 program year contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded.

(8) When the 2008 program year TxCDBG allocation becomes available, the executive director of the Office reviews the 2008 program year final recommendations for project awards and except for awards exceeding $300,000 announces the contract awards. Awards exceeding $300,000 are submitted to the Executive Committee for approval.

(9) Upon announcement of the 2008 program year contract awards, the Office staff works with recipients to execute the contract agreements. While the award must be based on the information provided in the application, the Office may negotiate any element of the contract with the recipient as long as the contract amount is not increased and the level of benefits described in the application is not decreased. The level of benefits may be negotiated only when the project is partially funded with the remainder of the target allocation within a region.

(d) Selection criteria (non-border colonia fund). The following is an outline of the selection criteria used by the Office for scoring colonia construction fund applications. Three hundred eighty points are available.

(1) Community distress (total--35 points). All community distress factor scores are based on the unincorporated population of the applicant. An applicant that has 125% or more of the average of all applicants in the competition of the rate on any community distress factor, except per capita income, receives the maximum number of points available for that factor. An applicant with less than 125% of the average of all applicants in the competition on a factor will receive a proportionate share of the maximum points available for that factor. An applicant that has 75% or less of the average of all applicants in the competition on the per capita income factor will receive the maximum number of points available for that factor. An applicant with greater than 75% of the average of all applicants in the competition on the per capita income factor will receive a proportionate share of the maximum points available for that factor.

(A) Percentage of persons living in poverty--15 points

(B) Per capita income--10 points

(C) Percentage of housing units without complete plumbing--5 points

(D) Unemployment Rate--5 points

(2) Benefit to low and moderate income persons (total--30 points). A formula is used to determine the percentage of TxCDBG funds benefiting low to moderate income persons. The percentage of low to moderate income persons benefiting from each construction, acquisition, and engineering activity is multiplied by the TxCDBG funds requested for each corresponding construction, acquisition, and engineering activity. Those calculations determine the amount of TxCDBG benefiting low to moderate income person for each of those activities. Then, the funds benefiting low to moderate income persons for each of those activities are added together and divided by the TxCDBG funds requested minus the TxCDBG funds requested for administration to determine the percentage of TxCDBG funds benefiting low to moderate income persons. Points are then awarded in accordance with the following scale:

(A) 100% to 90% of funds benefiting low to moderate income persons--30

(B) 89.99% to 80% of funds benefiting low to moderate income persons--25

(C) 79.99% to 70% of funds benefiting low to moderate income persons--20

(D) 69.99% to 60% of funds benefiting low to moderate income persons--15

(E) Below 60% of funds benefiting low to moderate income persons--5

(3) Project priorities (total--145 points) When necessary, a weighted average is used to assign scores to applications which include activities in the different project priority scoring levels. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for engineering and administration, a percentage of the total TxCDBG construction dollars for each activity is calculated. The percentage of the total TxCDBG construction dollars for each activity is then multiplied by the appropriate project priorities point level. The sum of the calculations determines the composite project priorities score. The different project priority scoring levels are:

(A) first time public water service activities (including yard service lines)--145 points

(B) first time public sewer service activities (including yard service lines)--145 points

(C) installation of approved residential on-site wastewater disposal systems for providing first time service--145 points

(D) installation of approved residential on-site wastewater disposal systems or failing systems that cause health issues--140 points

(E) housing activities--140 points

(F) first time water and/or sewer service through a privately-owned for profit utility--135 points

(G) expansion or improvement of existing water and/or sewer service--110 points

(H) street paving and drainage activities--75 points

(I) all other eligible activities--20 points

(4) Matching funds (total--20 points). An applicant's matching share may consist of one or more of the following contributions: cash; in-kind services or equipment use; materials or supplies; or land. An applicant's match is considered only if the contributions are used in the same target areas for activities directly related to the activities proposed in its application; if the applicant demonstrates that its matching share has been specifically designated for use in the activities proposed in its application; and if the applicant has used an acceptable and reasonable method of valuation. The population category under which county applications are scored is dependent upon the project type and the beneficiary population served. If the project is for activities in the unincorporated area of the county with a target area of beneficiaries, the population category is based on the unincorporated residents for the entire county. For county applications addressing water and sewer improvements in unincorporated areas, the population category is based on the actual number of beneficiaries to be served by the project activities. The population category under which multi-jurisdiction applications are scored is based on the combined populations of the applicants according to the 2000 Census. Applications that include a housing rehabilitation and/or affordable new permanent housing activity for low- and moderate-income persons as a part of a multi-activity application do not have to provide any matching funds for the housing activity. This exception is for housing activities only. The TxCDBG does not consider sewer or water service lines and connections as housing activities. The TxCDBG also does not consider on-site wastewater disposal systems as housing activities. Demolition/clearance and code enforcement, when done in the same target area in conjunction with a housing rehabilitation activity, is counted as part of the housing activity. When demolition/clearance and code enforcement are proposed activities, but are not part of a housing rehabilitation activity, then the demolition/clearance and code enforcement are not considered as housing activities. Any additional activities, other than related housing activities, are scored based on the percentage of match provided for the additional activities.

(A) Applicants with populations equal to or less than 1,500 according to the 2000 census:

(i) match equal to or greater than 5.0% of grant request--20;

(ii) match at least 2.0% but less than 5.0% of grant request--10;

(iii) match less than 2.0% of grant request--0.

(B) Applicants with populations equal to or less than 3,000 but over 1,500 according to the 2000 census:

(i) match equal to or greater than 10% of grant request--20;

(ii) match at least 2.5% but less than 10% of grant request--10;

(iii) match less than 2.5% of grant request--0.

(C) Applicants with populations equal to or less than 5,000 but over 3,000 according to the 2000 census:

(i) match equal to or greater than 15% of grant request--20;

(ii) match at least 3.5% but less than 15% of grant request--10;

(iii) match less than 3.5% of grant request--0.

(D) Applicants with populations over 5,000 according to the 2000 census:

(i) match equal to or greater than 20% of grant request--20;

(ii) match at least 5.0% but less than 20% of grant request--10;

(iii) match less than 5.0% of grant request--0.

(5) Project design (total--140 points). Each application is scored based on how the proposed project resolves the identified need and the severity of need within the applying jurisdiction. A more detailed description on the assignment of points under the project design scoring is included in the application guide for this fund and in paragraph (6) of this subsection. Each application is scored by a committee composed of TxCDBG staff using the following information submitted in the application:

(A) the severity of need within the colonia area(s) and how the proposed project resolves the identified need (additional consideration is given to water activities addressing impacts from drought conditions);

(B) the TxCDBG cost per low to moderate income beneficiary;

(C) the applicant's past efforts, especially the applicant's most recent efforts, to address water, sewer, and housing needs in colonia areas through applications submitted under the TxCDBG community development fund;

(D) the projected water and/or sewer rates after completion of the project based on 3,000 gallons, 5,000 gallons, and 10,000 gallons of usage;

(E) the ability of the applicant to utilize the grant funds in a timely manner;

(F) the availability of grant funds to the applicant for project financing from other sources;

(G) whether the applicant, or the service provider, has waived the payment of water or sewer service assessments, capital recovery fees, and other access fees for the proposed low and moderate income project beneficiaries;

(H) whether the applicant's proposed use of TxCDBG funds is to provide water or sewer connections/yardlines and/or plumbing improvements that provide access to water/sewer systems financed through the Texas Water Development Board Economically Distressed Areas Program;

(I) whether the applicant has already met its basic water and wastewater needs if the application is for activities other than water or wastewater; and

(J) whether the project has provided for future funding necessary to sustain the project.

(K) whether the applicant has provided any local matching funds for administrative, engineering, or construction activities.

(L) the applicant's past performance on previously awarded TXCDBG contracts.

(M) proximity of project site to entitlement cities or metropolitan statistical areas.

(6) Project design scoring guidelines. Project design scores are assigned by Office staff using guidelines that first consider the severity of the need for each application activity and how the project resolves the need described in the application. The severity of need and resolution of the need determine the maximum project design score that can be assigned to an application. After the maximum project design score has been established, points are then deducted from this maximum score through the evaluation of the other project design evaluation factors until the maximum score and the point deductions from that maximum score determine the final assigned project design score. When necessary, a weighted average is used to set the maximum project design score to applications that include activities in the different severity of the need/project resolution maximum scoring levels. Using as a base figure the TxCDBG funds requested minus the TxCDBG funds requested for engineering and administration, a percentage of the total TxCDBG construction dollars for each activity is calculated. The percentage of the total TxCDBG construction dollars for each activity is then multiplied by the appropriate maximum project design point level. The sum of the calculations determines the maximum project design score that the applicant can be assigned before points are deducted based on the evaluation of the other project design factors.

(A) Maximum project design score that can be assigned based on the severity of the need and resolution of the problem.

(i) Activities providing first-time public sewer service to the area--maximum score 140 points.

(ii) Activities providing first-time public water service to the area--maximum score 140 points.

(iii) Installation of approved residential on-site wastewater disposal systems providing first time sewer service--maximum score 140 points.

(iv) installation of approved residential on-site wastewater disposal systems for failing systems that cause health issues--maximum score 130 points.

(v) Housing rehabilitation and eligible new housing construction--maximum score 130 points.

(vi) Water activities addressing and resolving water supply shortage from drought conditions--maximum score 130 points.

(vii) Water or sewer activities expanding or improving existing water or sewer system--maximum score 125 points.

(viii) Street paving activities providing first time surface pavement to the area--maximum score 100 points.

(ix) Installation of designed drainage structures providing first time designed drainage system to the area--maximum score 100 points.

(x) Reconstruction of streets with existing surface pavement--maximum score 90 points.

(xi) Installation of improvements or drainage structures to a designed drainage system--maximum score 90 points.

(xii) All other eligible activities--maximum score 80 points.

(B) TxCDBG cost per low to moderate income beneficiary. The total amount of TxCDBG funds requested by the applicant is divided by the total number of low to moderate income persons benefiting from the application activities to determine the TxCDBG cost per beneficiary.

(i) Cost per low to moderate income beneficiary is equal to or less than $2,000. Deduct zero points from the set maximum project design score.

(ii) Cost per low to moderate income beneficiary is greater than $2,000 but equal to or less than $4,000. Deduct 1 point from the set maximum project design score.

(iii) Cost per low to moderate income beneficiary is greater than $4,000 but equal to or less than $6,000. Deduct 2 points from the set maximum project design score.

(iv) Cost per low to moderate income beneficiary is greater than $6,000 but equal to or less than $8,000. Deduct 3 points from the set maximum project design score.

(v) Cost per low to moderate income beneficiary is greater than $8,000 but equal to or less than $10,000. Deduct 4 points from the set maximum project design score.

(vi) Cost per low to moderate income beneficiary is greater than $10,000. Deduct 5 points from the set maximum project design score.

(C) The applicant's past efforts, especially the applicant's most recent efforts, to address water, sewer, and housing needs in colonia areas through applications submitted under the TxCDBG community development fund.

(i) The nonentitlement county submitted an application under the TxCDBG community development fund 2005/2006 biennial competition that was not addressing water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(ii) The nonentitlement county submitted an application under the TxCDBG community development fund 200]/2004 biennial competition that was not addressing water, sewer, and housing needs in colonia areas. Deduct 3 points from the set maximum project design score.

(D) The projected water and/or sewer rates after completion of the project based on 3,000 gallons, 5,000 gallons, and 10,000 gallons of usage.

(i) The projected water and/or sewer rates may be too high for the application beneficiaries. Deduct 1 point from the set maximum project design score.

(ii) The projected water and/or sewer rates are too low to discourage water conservation by the application beneficiaries. Deduct 1 point from the set maximum project design score.

(E) The ability of the applicant to utilize the grant funds in a timely manner.

(i) The application includes the acquisition of real property, easements or rights-of-way. Deduct 1 point from the set maximum project design score.

(ii) The application includes matching funds that have not been secured by the applicant. Deduct 1 point from the set maximum project design score.

(iii) The proposed application target area is not located in an area where a service provider already has the certificate of convenience and necessity (CCN) needed to provide service to the application beneficiaries. Deduct 1 point from the set maximum project design score.

(F) The availability of grant funds to the applicant for project financing from other sources. Grant funds for any activity included in the application are available from another source. Deduct 1 point from the set maximum project design score.

(G) The applicant, or the service provider, has not waived the payment of water or sewer service assessments, capital recovery fees, and other access fees for the proposed low and moderate income project beneficiaries.

(i) Assessments and fees budgeted in the application are equal to or less that $100 per low and moderate income household. Deduct 2 points from the set maximum project design score.

(ii) Assessments and fees budgeted in the application are greater than $100 but equal to or less that $200 per low and moderate income household. Deduct 4 points from the set maximum project design score.

(iii) Assessments and fees budgeted in the application are greater than $200 but equal to or less that $300 per low and moderate income household. Deduct 6 points from the set maximum project design score.

(iv) Assessments and fees budgeted in the application are greater than $300 but equal to or less that $500 per low and moderate income household. Deduct 8 points from the set maximum project design score.

(v) Assessments and fees budgeted in the application are greater than $500 per low and moderate income household. Deduct 10 points from the set maximum project design score.

(H) Applicant's proposed use of TxCDBG funds does not provide water or sewer connections/yardlines and/or plumbing improvements that provide access to water/sewer systems financed through the Texas Water Development Board Economically Distressed Areas Program. Deduct 2 points from the set maximum project design score.

(I) The application is for activities other than water or wastewater and the applicant has not already met its basic water and wastewater needs. Deduct 3 points from the set maximum project design score,

(J) The applicant has not documented that future funding necessary to sustain the project is available. Deduct 3 points from the set maximum project design score,

(7) Past performance. An applicant receives from zero to ten (10) points based on the applicant's past performance on previously awarded TxCDBG contracts. The applicant's score will primarily be based on an assessment of the applicant's performance on the applicant's two (2) most recent TxCDBG contracts that have reached the

end of the original contract period stipulated in the contract. TxCDBG staff may also assess the applicant's performance on existing TxCDBG contracts that have not reached the end of the original contract period. An applicant that has never received a TxCDBG grant award will automatically receive these points. TxCDBG staff will assess the applicant's performance on TxCDBG contracts up to the application deadline date. The applicant's performance on TxCDBG contracts after the application deadline date will not be evaluated in this assessment. The evaluation of an applicant's past performance may include, but is not necessarily limited to the following:

(A) The applicant's completion of the previous contract activities within the original contract period.

(B) The applicant's submission of the required close-out documents within the period prescribed for such submission.

(C) The applicant's timely response to monitoring findings on previous TxCDBG contracts especially any instances when the monitoring findings included disallowed costs.

(D) The applicant's timely response to audit findings on previous TxCDBG contracts.

(E) The applicant's submission of all contract reporting requirements such as quarterly progress reports, certificates of expenditures, and project completion reports.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2007.

TRD-200700420
Mark Wyatt
Manager Program Development
Office of Rural Community Affairs
Effective date: March 4, 2007
Proposal publication date: November 10, 2006
For further information, please call: (512) 936-6701

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SUBCHAPTER B. CONTRACT ADMINISTRATION

10 TAC §255.41

The amendments are adopted under §487.052 of the Government Code, which provides the executive committee with the authority to adopt rules concerning the implementation of the Office's responsibilities.

§255.41. Uniform Administrative Requirements.

(a) Purpose. The purpose of this section is to establish variations from the uniform grant and contract management standards (UGCMS) adopted by the Office of the Governor in 1 TAC §§5.141 - 5.167.

(b) Applicability. This section applies to all units of general local government, as defined in 42 United States Code §5302(a)(1), which apply for, or are awarded a contract under the TXCDBG.

(c) Variations.

(1) The federal laws and regulations specified in the Housing and Community Development Act of 1974, as amended (42 United States Code §§5302 et seq.) and federal Community Development Block Grant (CDBG) Program regulations in 24 Code of Federal Regulations, Part 58, concerning federal laws and regulations with which nonentitlement area CDBG recipients are required to comply, constitute additional assurances under the UGCMS with which TXCDBG recipients must comply.

(2) Beginning with the expenditure of federal fiscal year 1984 CDBG funds, the provisions of Public Law 98-181, §106(i) (November 30, 1983), constitute additional assurances under the UGCMS with which TXCDBG applicants and recipients must certify they will comply.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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PART 7. TEXAS RESIDENTIAL CONSTRUCTION COMMISSION

CHAPTER 303. REGISTRATION

SUBCHAPTER A. REGISTRATION OF BUILDERS

10 TAC §303.22

The Texas Residential Construction Commission (commission) adopts new 10 Texas Administrative Code §303.22 without changes to the proposed text, as published in the October 6, 2006, issue of the *Texas Register* (31 TexReg 8317). The new rule clarifies the information that will be considered in evaluating the criminal backgrounds of builders, remodelers, and their agents.

Section 303.22 explains the factors to be considered in denying or registration or renewal of a builder, remodeler, and an agent who has been convicted of, pled guilty to, or entered a plea to any felony change or to a misdemeanor crime involving moral turpitude.

No comments were received on the proposed rule.

Section 408.001 of the Property Code provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code. Property Code, Chapter 416 provides for the registration of builders, remodelers, and their agents and Occupations Code, Chapter 53 requires the consideration of certain information when reviewing criminal histories as it relates to licensed occupations.

The statutory provisions affected by this adoption are those set forth in the Title 16, Property Code, Chapters 408 and 416, and Occupations Code, Chapter 53.

Cross Reference to Statutes: Title 16, Property Code, Chapters 408 and 416, and Occupations Code, Chapter 53. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Durso
General Counsel
Texas Residential Construction Commission
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Proposal publication date: October 6, 2006
For further information, please call: (512) 463-2886

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SUBCHAPTER C. REGISTRATION OF THIRD-PARTY INSPECTORS

10 TAC §303.211

The Texas Residential Construction Commission (commission) adopts new 10 Texas Administrative Code §303.211 without changes to the proposed text, as published in the October 6, 2006, issue of the *Texas Register* (31 TexReg 8318). The new rule clarifies the information that will be considered in evaluating the criminal backgrounds and qualifications of third-party inspectors.

Section 303.211 explains the factors to be considered in evaluating the criminal backgrounds and qualifications of third-party inspector applicants who have been convicted of, pled guilty to, or entered a plea to any felony change or to a misdemeanor crime involving moral turpitude.

No comments were received on the proposed rule.

Section 408.001 of the Property Code provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code. Property Code, §427.001, provides the qualifications of third-party inspectors and Occupations Code, Chapter 53, requires the consideration of certain information when reviewing criminal histories as it relates to licensed occupations.

The statutory provisions affected by this adoption are those set forth in the Title 16, Property Code, §408.001 and §427.001, and Occupations Code, Chapter 53. Cross Reference to Statutes: Title 16, Property Code, §408.001 and §427.001, and Occupations Code, Chapter 53. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. THIRD-PARTY WARRANTY COMPANIES

10 TAC §303.267

The Texas Residential Construction Commission (commission) adopts new 10 Texas Administrative Code §303.267 without changes to the proposed text, as published in the October 6, 2006, issue of the *Texas Register* (31 TexReg 8319). The new rule clarifies the information that will be considered in evaluating the criminal backgrounds and approval of third-party warranty company applicants.

Section 303.267 explains the factors to be considered in evaluating the criminal backgrounds and approval process for third-party warranty company applicants who have been convicted of, pled guilty to, or entered a plea to any felony change or to a misdemeanor crime involving moral turpitude.

No comments were received on the proposed new rule.

Section 408.001 of the Property Code provides general authority for the commission to adopt rules necessary for the implementation of Title 16, Property Code. Property Code, §430.008, provides for the approval of third-party warranty companies and Occupations Code, Chapter 53, requires the consideration of certain information when reviewing criminal histories as it relates to licensed occupations.

The statutory provisions affected by this adoption are those set forth in Title 16, Property Code, §408.001 and §430.008, and Occupations Code, Chapter 53. Cross Reference to Statutes: Title 16, Property Code, §408.001 and §430.008, and Occupations Code, Chapter 53. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Susan K. Durso
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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 68. ELIMINATION OF ARCHITECTURAL BARRIERS

The Texas Commission of Licensing and Regulation ("Commission") adopts amendments to existing rules at 16 Texas Administrative Code ("TAC") Chapter 68, §§68.1, 68.10, 68.20, 68.31, 68.50, 68.52, 68.53, 68.65, 68.70, 68.75, 68.76, 68.80, 68.90, 68.100, 68.101, and 68.103; new rule §§68.54, 68.55, 68.60, and 68.73, and the repeal of §68.54 and §68.74 regarding the elimination of architectural barriers program as published in the October 20, 2006, issue of the *Texas Register* (31 TexReg 8603), without changes, and will not be republished. The Commission also adopts amendments to existing rule §§68.30, 68.50, 68.51, and 68.102; and new rules §68.74, and §68.104 published in the October 20, 2006, issue of the *Texas Register* (31 TexReg 8603), with changes from the rules as proposed, and are republished.

The amendments, new rules, and repeal are a result of the Department's rule review, which is required every four years, of the architectural barriers administrative rules. The amendments, new rules, and repeal are necessary to update statutory references and bring rule requirements more in line with state and federal law. A new continuing education rule is added to require registered accessibility specialists to complete eight hours of continuing education. The adoption of these rules also reorganizes certain provisions for greater clarity and readability and deletes unnecessary provisions.

The Architectural Barriers Advisory Committee ("Committee") met on November 28, 2006, and recommended adoption of these rules with certain changes based on public comments. The proposed amendments, new rules, and repeals were distributed to persons internal and external to the agency. The public comment period closed on November 20, 2006. Thirteen written comments were received in response to the proposal, two of which were not timely received. The following is a summary of the comments and the Department's responses, along with a description of changes made based on various comments.

Written Public Comments

The Texas Department of Transportation (TxDOT) recommends revising the definition of "public right-of-way" in §68.10 to add "other transportation facilities," specifically to include hike and bike trails. The Department disagrees that this change should be made at this time. The Department believes that this is a substantive change that would significantly broaden the definition and so would require further study and additional public comment. TxDOT also recommends adding definitions for various types of curb ramps. The Department does not believe that the recommended curb ramp definitions are needed in the rules. In the Department's experience there has been no confusion over the meaning of these terms expressed by the regulated community or the public. If clarification of the meanings of these terms becomes necessary, the Department could propose rule changes in the future.

TxDOT expresses concern about language in §68.74(d) that prohibits a registered accessibility specialist from receiving credit for attending the same course more than once. The Department agrees that clarification of this rule is needed, and the adopted rule includes language to clarify that a course may not be repeated for credit during the one-year period for which the course is approved. TxDOT also recommends keeping the maximum setback for detectable warnings at diagonal curb ramps at ten inches, rather than the proposed eight inches, in §68.102(b)(2)(C). The Department agrees with this comment, and the rule as adopted retains the ten-inch setback. The current set back is more feasible with the type of construction that TxDOT uses.

The Texas Registered Accessibility Specialist Association (TRASA) proposes adding a definition of "construction cost" to the definitions section, §68.10. The Department disagrees with this comment and believes that the language defining the term "construction cost" is more convenient in §68.80, where the term is used. TRASA also suggests adding to the description of exempt employee work areas, areas that are depressed seven inches. While the Department acknowledges that the suggested language might be a sensible addition to the exemption, the Department believes that the wording of the exemption should remain consistent with federal standards, which do not include the suggested language. TRASA recommends adding "residential amenities" to the description of exempt residential facilities. The Department does not believe that this is an appropriate addition to the rules at this time because the public and interested parties would need to be advised of this change and have the opportunity to comment. The Department will consider this language for future rulemaking.

TRASA suggests deleting language concerning approval of construction documents, so that the only result of a plan review would be reporting the plan review findings. The Department agrees with this comment because an approval or disapproval of construction documents does not have the effect of preventing construction of the project from proceeding. The only practical effect is to advise the owner or design professional of items that will need to be changed to bring the project, when it is constructed, into compliance with the Texas Accessibility Standards. The language of adopted §68.51(a) and (c)(1) has been changed accordingly.

TRASA suggests applying the new eligibility requirements for RAS's in §68.70(a) to renewals of existing registrations, not to new applications only. The Department does not agree that the new eligibility requirements should be applied retroactively to RAS's who are currently registered. The intent of the rule change is not to prevent currently-registered RAS's, who are deemed to be qualified, from continuing to offer services.

TRASA suggests specifying in §68.74(d) that a RAS may not attend a continuing education course more than once *during the RAS's licensing year.* The Department agrees that clarification of the rule is needed and has modified the rule as discussed above; however, the Department believes that the relevant time period to reference in the rule is the one-year period for which the course is approved, not the RAS's licensing year. This rule will help to ensure that the continuing education hours taken by a RAS are meaningful and contain useful information. TRASA suggests reorganizing continuing education topics in §68.74 to allow certain topics to be offered by providers who are not registered with the Department. The Department agrees with the substance of this comment. Based on this comment and oral comments received at the Architectural Barriers Advisory Committee Meeting on November 28, 2006, the Department believes that RAS's should be allowed to satisfy part of the continuing education requirement using courses that have not gone through the Department's approval process. This would allow RAS's to use courses taken to maintain some other professional license or certification, such as an architect's license. The rule as adopted allows a RAS to receive up to four hours of continuing education credit for courses that are not approved by the Department

and that are offered by providers not registered with the Department. The courses must be dedicated to instruction in one of the specified topics. This credit cannot be used to satisfy the required four hours specific to Texas law and rules and Department standards and procedures. The RAS will certify upon renewing his or her registration the number of hours completed and must keep a copy of the certificate of course completion for three years after the date of completion. TRASA also suggests adding Fair Housing Act and other state accessibility standards as acceptable continuing education topics. The Department agrees that the federal Fair Housing Act, which includes accessibility requirements, is a relevant topic for RAS continuing education. The adopted version of §68.74(f) includes this topic. However, the Department does not consider other states' standards to be relevant because RAS's must apply or be familiar with Texas and federal standards.

TRASA suggests adding to §68.80(b) that a RAS is not obligated to charge fees in accordance with the Department's fee schedule. The Department does not believe that this change is necessary because §68.80(a) indicates that the rules applies to fees collected by the Department. Finally, TRASA recommends adding "or other emergency responders" after fire-fighting personnel in §68.104. The Department agrees that this change is necessary because common use spaces and elements at fire stations may be used by other emergency responders, such as emergency medical technicians. The rules as adopted have been changed accordingly.

One commenter indicates that she does not want continuing education provided only by large companies who do continuing education as a business. The Department does not believe that any rule changes are warranted based on this comment. However, in implementing the rule, the Department will seek to have a variety of continuing education providers offering courses so that RAS's will have sufficient options for completing continuing education. The commenter concurs with TRASA's comments regarding continuing education. See the Department's responses above concerning those comments.

Another commenter suggests requiring an approved plan review before permits are issued. The Department does not have control over the issuance of building permits, and implementing the commenter's suggestion likely would require statutory changes. No changes to the rules are warranted based on this comment. The commenter also wants to require state employees to have files in hand before performing an inspection. The Department agrees that the person performing an inspection should have access to relevant information about the project. However, if any changes are needed based on this comment, they would be more appropriately addressed in Department procedures, rather than in these proposed rules. The commenter would also require late submittals by engineers and architects to be reported to the appropriate licensing agency. Such reporting is already required by Texas Government Code, §469.104, so no rule changes are needed. The commenter would require complaint files to be reinspected. The Department has a procedure in place to follow up on enforcement complaints to determine whether the project has been brought into compliance. No rule changes are warranted based on this comment. The commenter suggests providing continuing education for RAS's on ethics standards. The Department agrees that ethics is a relevant topic for RAS continuing education, and §68.74 as adopted has been changed to include this topic. Finally, the commenter states that the Department should protect RAS's and not investigate and require audits based on erroneous complaints. The Department responds that all complaints filed which allege a violation within the Department's jurisdiction must be investigated. If the Department determines that a compliant is erroneous, the Department would take no action against the RAS who is the subject of the complaint. No rule changes are warranted based on this comment.

A commenter questions what the penalty is for an owner not requesting an inspection within 30 days after completion of construction. The Department responds that penalties for specific rule violations are addressed in the penalty matrix, which is part of the Department's Enforcement Plan, rather than in the rules. The commenter also expresses confusion over a reference in the proposed rules to a Proof of Submission form. This form will be developed and made available once the rules are effective.

A commenter points out that the exemption for places used primarily for religious rituals should be consistent in the use of the term "common *use* areas." The Department agrees. In the adopted version of §68.30(8), the term "common areas" in the last sentence has been changed to "common use areas," as this is the term that is defined in the rules.

A commenter recommends requiring the owner to request an inspection at least 30 days prior to the first anniversary of completion of the project, rather than the current requirement to request the inspection within 30 days after the completion of the project. The Department believes that the current requirement in the rules is appropriate and facilitates the timely inspection of projects. No rule changes are warranted based on this comment. The commenter agrees with the use of the Request for Inspection form. The commenter also suggests having a broader range of continuing education topics. The Department generally agrees with the commenter's suggestion and has modified §68.74 to add topics as described above. The commenter suggests changing §68.74(d) to require a course not to be repeated more than once every three years. The Department responds that continuing education courses are approved for a one-year period, so the rule should reference that period.

One commenter, a shopping mall owner, expresses concern over the owner's lack of control over requesting inspections when this is handled instead by tenants. The Department notes that the owner's responsibility for architectural barriers compliance is fixed by statute. The Department believes that this is an issue to be resolved between the owner of the building or facility and the tenant and that no rule changes are necessary.

A commenter suggests that the definition of "owner" specifically should include property management companies. The Department believes that the definition of "owner" in §68.10 is sufficiently broad to encompass all types of entities. The definition of "designated agent" has not been proposed for revision in this rulemaking, but the Department will examine whether that definition should be broadened in future rulemaking. The commenter also suggests that the rules should clarify who is responsible for compliance as between the owner of the building and the owner of the property (presumably the land). The Department notes that both the statute and the rules place responsibility for compliance on the owner *of the building or facility.* No rule changes are warranted based on this comment. The commenter suggests adding to electronic project registration a field for the owner's contact E-mail address. This comment relates to Department procedure and electronic forms and does not require rule changes. Finally, the commenter believes that the rules should specify that all submittals of construction documents, not only resubmittals, received after completion of construction may not be reviewed but will become a matter of record. The Depart-

ment disagrees because, by statute, the Department is responsible for reviewing submitted construction documents.

A commenter suggests requiring RAS's who currently hold only an inspection endorsement to meet the new higher RAS registration requirements within a specified period of time. As discussed above, the Department does not believe that retroactively applying the new requirements to current registrants is appropriate. Retroactive application of the requirements would be unfair to RAS's who have met the existing requirements and, therefore, have been deemed qualified to provide services. The commenter also objects to the current $350 RAS renewal fee because the renewal term is only one year. The Department notes that the fee and the renewal term have not been changed in these proposed rules. The only proposed RAS fee change is to eliminate single endorsement fees since the single endorsements are being eliminated. Texas Occupations Code, Chapter 51 requires that Department fees be set in amounts reasonable and necessary to cover the costs of a program; and the Department periodically reviews fees to determine whether they are set at appropriate levels. Finally, the commenter suggests that the Department should provide the continuing education courses for RAS's. The Department's intent is to foster the creation of a private, competitive market for RAS continuing education, rather than the Department offering the continuing education directly. This approach has worked well in other Department programs, and the Department believes that this approach will provide the best choices and value for RAS's.

A commenter suggests that §68.54 be amended to specify that an Architectural Barriers Registration Form may be submitted to a RAS or contract provider, as well as to the Department. The Department does not believe that this change is necessary. The rule is needed to establish a Department process for reviewing projects that are not required by law to be reviewed. An owner may wish to contract with a RAS to conduct such a review, but this does not need to be addressed in the rules because the review is not required. Similarly, the commenter suggests that §68.55, regarding preliminary plan reviews, also mention RAS's and contract providers. The Department does not believe that such a change is necessary because the purpose of the rule is to establish a Department process for preliminary plan reviews. The commenter objects to the new language in §68.70 that, if all application requirements are not met within one year, a new RAS application must be submitted. The commenter indicates that his employee will not be able to meet the new RAS registration requirements within that timeframe. The Department believes that the one-year timeframe is reasonable. The rule simply places a maximum time limit on how long an application may be held open before all requirements are met. The rule is necessary for the Department to maintain an efficient licensing process. Additionally, the commenter does not agree that all eight continuing education hours for RAS's should be approved by the Department. See the Department's response to this issue above. The commenter also suggests that a RAS be restricted from soliciting a project owner if the project file is in the possession of another RAS. This issue is beyond the scope of the current rulemaking, but the Department may consider this issue in the context of future rulemaking. Finally, the commenter suggests creating a one-year training program for RAS's. The Department responds that this matter is beyond the scope of the current rulemaking and so cannot be considered at this time.

The Department received written comments from the Texas Society of Architects. The Department did not timely receive these comments and so did not have sufficient time to consider all the issues raised. First, the commenter seems to object to the number of continuing education hours required of RAS's. The Department believes that the number of hours is appropriate, and the requirement was developed with significant input from the industry and the Architectural Barriers Advisory Committee. The commenter also objects to changes to §68.50 that, in the commenter's view, shift the burden of payment of fees from the project owner to the design professional. See the Department's response to this issue in the below discussion of oral comments.

The Department received written comments from a representative of the City of Corpus Christi. The Department did not timely receive these comments and so did not have sufficient time to consider the issues raised. The commenter objects to §68.30(11) which, in the commenter's view, would expand the exemption to cover multi-family residential dwellings. The Department notes that residential facilities in general are outside the scope of Texas Government Code, Chapter 469. It is unclear to the Department how the exemption language would negatively impact multi-family dwellings. The commenter also questions the deletion from §68.102 of textures complying with TAS 4.7.4. The purpose of this deletion is to require detectable warnings at curb ramps and is necessary to accord with current federal standards. Lastly, the commenter agrees with the elimination of single and dual endorsements for RAS's and agrees with the added language for registering, reviewing and/or inspecting buildings or facilities not subject to the Act.

Oral Comments from Architectural Barriers Advisory Committee Meeting

The Department received some oral comments, though not within the 30-day public comment period, at the November 28, 2006, meeting of the Architectural Barriers Advisory Committee. A commenter objected to the changes in §68.50(c) that require project registration to be accomplished and fees paid when the design professional submits the construction documents. The commenter's concern is that the rule effectively places responsibility on the design professional to pay the fees. The Texas Society of Architects also expressed concern over the issue. The Department developed the rule changes with the input and approval of the Advisory Committee, which includes architect members. In the Department's view, the rule changes are beneficial to design professionals because they enable the design professional to have more control over filings made in the project. The Department notes also that the ultimate responsibility for payment of fees lies with the project owner, not the design professional. If the design professional does not wish to pay the fees up front, the Department believes that it is possible for the design professional to make arrangements with the owner to pay the fees. No changes have been made based on these comments.

Other comments suggested allowing RAS's to use continuing education obtained for other professional licenses, such as architect licenses, to satisfy at least part of the RAS continuing education requirements. See the discussion above regarding changes to the rule as adopted.

A comment suggested postponing the beginning date for continuing education compliance to allow more time for providers to become registered to offer courses and for RAS's to complete courses. The Department agrees with this comment, and §68.74(h) has been changed to specify that the continuing education requirements apply to RAS's whose registrations expire on or after March 1, 2008. This date should allow sufficient time

for providers to become registered, courses to be approved, and RAS's to complete the requirements.

16 TAC §§68.1, 68.10, 68.20, 68.30, 68.31, 68.50 - 68.55, 68.60, 68.65, 68.70, 68.73 - 68.76, 68.80, 68.90, 68.100 - 68.104

The amendments and new rules are adopted under Texas Government Code, Chapter 469, which directs the Commission to adopt standards, specifications, and other rules under that chapter, and under Texas Occupations Code, Chapters 51, which authorizes the Commission to adopt rules as necessary to implement each law establishing a program regulated by the Department. In particular, Texas Occupations Code, §51.405 requires the Commission to recognize, prepare, or administer continuing education programs for license holders.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the adoption.

§68.30. Exemptions.

The following buildings, facilities, spaces, or elements are exempt from the provisions of the Act:

(1) *Federal Property*. Buildings or facilities owned, operated, or leased by the federal government;

(2) *Construction Sites*. Structures and sites directly associated with the actual processes of construction, including, but not limited to, scaffolding, bridging, materials hoists, materials storage, construction trailers, and portable toilet units provided for use exclusively by construction personnel on a construction site;

(3) *Raised Areas*. Areas raised primarily for purposes of security, life safety, or fire safety, including, but not limited to, observation or lookout galleries, prison guard towers, fire towers, or lifeguard stands;

(4) *Limited Access Spaces*. Spaces accessed only by ladders, catwalks, crawl spaces, or very narrow passageways;

(5) *Machinery Spaces*. Spaces accessed primarily by service personnel for maintenance, repair, or occasional monitoring of equipment. Machinery spaces include, but are not limited to, elevator pits, elevator penthouses, mechanical, electrical, or communications equipment rooms, piping or equipment catwalks, water and sewage treatment pump rooms and stations, petroleum and chemical processing and distribution structures, electric substations and transformer vaults, environmental treatment structures, and highway and tunnel utility facilities;

(6) *Single Occupant Structures*. Single occupant structures accessed only by passageways below grade or elevated above standard curb height, including but not limited to, toll booths that are accessed only by underground tunnels;

(7) *Restricted Occupancy Spaces*. Vertical access (elevators and platform lifts) is not required for the second floor of two-story control buildings located within a chemical manufacturing facility where the second floor is restricted to employees and does not contain common areas or employment opportunities not otherwise available in accessible locations within the same building;

(8) *Places Used Primarily for Religious Rituals*. An area within a building or facility of a religious organization used primarily for religious ritual as determined by the owner or occupant. To facilitate the plan review, the owner or occupant shall include a clear designation of such areas with the plans submitted for review. This exemption does not apply to common use areas. Examples of common use areas include, but are not limited to, the following: parking facilities, accessible routes, walkways, hallways, toilet facilities, entrances, public telephones, drinking fountains, and exits;

(9) *Specific Employee Work Areas*. Employee work areas, or portions of employee work areas, that are less than 300 square feet ($28m^2$) in area and elevated 7 inches (180 mm) or more above the ground or finish floor where the elevation is essential to the function of the spaces; and dumpster pads/enclosures that are accessed exclusively by employees;

(10) *Van Accessible Parking at Garages Constructed Prior to April 1994*. Parking garages where construction was started before April 1, 1994, and the existing vertical clearance of the garage is less than 98", are exempted from requirements to have van-accessible parking spaces located within the garage. If additional surface parking is provided, the required van accessible parking spaces shall be located on a surface lot in closest proximity to the accessible public entrance serving the facility; and

(11) *Residential Facilities*. Those portions of public or privately funded apartments, condominiums, townhomes, and single-family dwellings used exclusively by residents and their guests.

§68.50. Submission of Construction Documents.

(a) An architect, interior designer, landscape architect, or engineer with overall responsibility for the design of a building or facility subject to §469.101 of the Act, shall mail, ship, or hand-deliver the construction documents along with a Proof of Submission form to the department, a registered accessibility specialist, or a contract provider not later than the fifth day after the plans and specifications are issued. In computing time under this subsection, a Saturday, Sunday or legal holiday is not included.

(b) In instances when there is not a design professional with overall responsibility, the owner of a building or facility subject to §469.101 of the Act, shall mail, ship, or hand-deliver construction documents to the department, a registered accessibility specialist, or a contract provider prior to filing an application for building permit or commencement of construction.

(c) An Elimination of Architectural Barriers Project Registration form or Architectural Barriers Project Registration Confirmation Page must be completed for each subject building or facility and submitted along with the applicable fees when the design professional or owner submits the construction documents.

§68.51. Review of Construction Documents.

(a) After review, the owner and the person making the submission will be advised in writing of the plan review findings.

(b) Construction documents received by the department, a registered accessibility specialist, or a contract provider shall become the property of the department.

(c) Design revisions may be made by submitting to the department, a registered accessibility specialist, or a contract provider revised construction documents, change orders, addenda, and letters.

(1) Resubmittals received prior to the recorded estimated completion of construction will be reviewed. The owner and the person making the resubmittal will be advised of the findings.

(2) Resubmittals received after completion of construction, based on the recorded estimated completion of construction, may not be reviewed but will become a matter of record.

§68.74. Continuing Education.

(a) Terms used in this section have the meanings assigned by Chapter 59 of this title, unless the context indicates otherwise.

(b) To renew a certificate of registration, a registered accessibility specialist must complete eight hours of continuing education as provided in this section. The continuing education hours must include four hours of instruction in courses approved by the department under Chapter 59 of this title in one or more of the following topics:

(1) Texas state laws or rules that regulate the conduct of registered accessibility specialists;

(2) Texas Accessibility Standards;

(3) Technical Memoranda as published by the Department; or

(4) Registered Accessibility Specialist Procedures as published by the Department.

(c) The continuing education hours must have been completed within the term of the current registration, in the case of a timely renewal. For a late renewal, the continuing education hours must have been completed within the one-year period immediately prior to the date of renewal.

(d) A registered accessibility specialist may not receive continuing education credit for attending the same course more than once during the one-year period for which the course is approved.

(e) A registered accessibility specialist shall retain a copy of the certificate of completion for a department-approved course for one year after the date of completion and shall retain a copy of the certificate of completion for a course completed under Subsection (g) for three years after the date of completion. In conducting any inspection or investigation of the registered accessibility specialist, the department may examine the registered accessibility specialist's records to determine compliance with this section.

(f) To be approved under Chapter 59 of this title, a provider's course must be dedicated to instruction in one or more of the following topics:

(1) Texas Government Code, Chapter 469 - Elimination of Architectural Barriers;

(2) 16 Texas Administrative Code, Chapter 68 - Administrative Rules;

(3) Texas Accessibility Standards;

(4) Technical Memoranda as published by the Department;

(5) Registered Accessibility Specialist Procedures as published by the Department;

(6) Other laws and standards:

(A) Americans with Disabilities Act Accessibility Guidelines (ADAAG) or any other accessibility guidelines proposed or adopted by the Access Board or United States Department of Justice;

(B) Americans with Disabilities Act;

(C) International Code Council/American National Standards Institute (ANSI) A117.1 Standard on Accessible and Usable Buildings and Facilities;

(D) Life safety codes; or

(E) Fair Housing Act;

(7) Business practices; or

(8) Ethics.

(g) A registered accessibility specialist may receive up to four hours of continuing education credit per renewal for completing courses that are not approved by the department under Chapter 59 of this title and that are offered by providers not registered with the department under Chapter 59 of this title, subject to the following conditions:

(1) the courses must be dedicated to instruction in one or more of the topics listed in subsection (f);

(2) the courses must be offered by a college or university, professional organization, or government agency;

(3) the registered accessibility specialist must certify at the time of renewal the number of hours completed under this subsection;

(4) the department has final authority to deny any hours of credit claimed by a registered accessibility specialist under this subsection; and

(5) credit received under this subsection may not count toward the four hours of instruction required by Subsection (b).

(h) This section shall apply to providers and courses for registered accessibility specialists upon the effective date of this section.

(i) This section shall apply to certificates of registration, issued under §469.201 of the Act, that expire on or after March 1, 2008.

§68.102. Public Right-of-Way Projects.

(a) For purposes of §68.80, the estimated cost of construction for the project shall be based on the pedestrian elements only. Construction documents submitted for review are only required to include pedestrian elements being constructed, renovated, modified, or altered as part of the project scope.

(b) Application of TAS shall be limited to those pedestrian elements being constructed, renovated, modified, or altered as part of the project scope. The pedestrian elements shall comply with applicable TAS 4.1 through 4.35 except as modified by this section.

(1) Sidewalks--At sidewalks constructed within the public right-of-way, handrails are not required; however, if provided they must comply with TAS 4.8.5. Where the adjacent roadway has running slopes of 5% or greater, the pedestrian access route shall not exceed the grade established for the adjacent roadway. EXCEPTION: The running slope of a pedestrian access route is permitted to be steeper than the grade of the adjacent roadway provided that the pedestrian access route complies with TAS 4.8.

(2) Curb Ramps--At curb ramps constructed within the public right-of-way, handrails are not required; however, if provided they must comply with TAS 4.8.5. For purposes of this section, non-signalized driveways are not considered to be hazardous vehicular areas.

(A) At perpendicular curb ramps constructed within the public right of way, detectable warnings complying with TAS 4.29.2 at a minimum of 24" in depth (in the direction of pedestrian travel) and extending the full width of the curb ramp shall be provided where the pedestrian access route enters a crosswalk or other hazardous vehicular area.

(B) At parallel curb ramps constructed within the public right-of-way, detectable warnings complying with TAS 4.29.2 at a minimum of 24" in depth (in the direction of pedestrian travel) and extending the full width of the landing shall be provided where the pedestrian access route enters a crosswalk or other hazardous vehicular area.

(C) At diagonal curb ramps constructed within the public right-of-way, detectable warnings complying with TAS 4.29.2 at a minimum of 24" in depth (in the direction of pedestrian travel) and extending the full width of the curb ramp or landing, shall be provided where the pedestrian access route enters a crosswalk or other hazardous vehicular area. Additionally, the department will allow the detectable warning to be curved with the radius of the corner. The detectable warning shall be located so that the edge nearest the curb line is 6" minimum and 10" maximum from the curb line.

§68.104. Elements, Spaces and Accessible Routes at Fire Stations.

At fire stations, common use spaces and elements accessed exclusively by fire-fighting personnel or other emergency responders are only required to be adaptable. Additionally, at multi-level fire stations, levels accessed exclusively by fire-fighting personnel are not required to be served by an accessible route. Public spaces and elements within these facilities must comply with all applicable technical standards.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 8, 2007.

TRD-200700367
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 1, 2007
Proposal publication date: October 20, 2006
For further information, please call: (512) 463-7348

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16 TAC §68.54, §68.74

The repeals are adopted under Texas Government Code, Chapter 469, which directs the Commission to adopt standards, specifications, and other rules under that chapter, and under Texas Occupations Code, Chapters 51, which authorizes the Commission to adopt rules as necessary to implement each law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 1, 2007
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TITLE 22. EXAMINING BOARDS

PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

The Texas State Board of Social Worker Examiners (board) adopts amendments to §§781.102, 781.215, 781.217, 781.301 - 781.304, 781.306, 781.313, 781.314, 781.402, 781.405, 781.409, 781.413, 781.414, 781.508, 781.511 - 781.514, 781.604, 781.605, 781.806 and new 781.516 and 781.517, concerning the licensure and regulation of social workers. The amendments to §§781.102, 781.217, 781.301, 781.303, 781.402, 781.414, 781.508, 781.512, 781.513 and new 781.516 and 781.517 are adopted with changes to the proposed text as published in the September 29, 2006, issue of the *Texas Register* (31 TexReg 8176). Sections 781.215, 781.302, 781.304, 781.306, 781.313, 781.314, 781.405, 781.409, 781.413, 781.511, 781.514, 781.604, 781.605, and 781.806 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The adopted amendments and new sections are necessary to complete implementation of Senate Bill 810, 78th Texas Legislature, 2003, which amended the Occupations Code, Chapter 505, and required the board to establish independent practice authorization for all levels of licensure.

Additionally, the board adopts amendments to correct minor errors, improve the rules, and ensure that the rules reflect current legal, policy, and operational considerations.

SECTION-BY-SECTION SUMMARY

The amendments to §781.102 adds new definitions of "Conditions of exchange," "Independent clinical practice," "Independent non-clinical practice," and "Sole responsibility for the client," improves the definition of Supervisor; and renumbers the definitions accordingly.

The amendments to §781.215 clarify what is displayed on the license certificate. Amendments to §781.217 clarify the fees for changing to inactive status, the reactivation of a license, and renewal fee for an inactive license; update terminology used for an approved continuing education provider and a board approved supervisor; and renumber the section accordingly.

The amendments to §781.301 reflect the new designation of "Bachelors" for the examination for LBSW; specify the licensure categories and specialty recognition required to practice independently (and receive remuneration from direct billing or through contract work); establish August 31, 2007, as a deadline for licensees to have obtained the appropriate level of licensure and/or specialty recognition (or be under application for same) in order to continue practicing independently; clarify that a person may not practice independently without the proper license or specialty recognition; and reorder and renumber the section accordingly. The amendments to §781.302 define two distinct supervised experience tracks, one for clinical licensure and one for non-clinical independent practice recognition; establish that experience under a temporary license is not eligible for supervision hours or experience toward clinical licensure or independent practice recognition; provide clarity on the process for application for a licensure upgrade or independent practice recognition and required supervision and experience

documentation; and establish rules for supervision when it is required as a condition of initial or continued licensure or as a result of disciplinary action or in order to participate in the AMEC program. The amendments to §781.303 establish a one time application period ending on August 31, 2007, for a waiver of the experience requirements for independent practice recognition based on criteria established in rule; to establish that appeals of denials by staff be reviewed by the board whose decisions on appeals are final; and establish that a licensee who applies for the independent practice recognition must cease and desist independent practice immediately if their application is finally denied (30 days after the denial of the application by staff or an appeal is not granted), unless they are under a board approved supervision plan for independent practice recognition. Amendments to §781.304 clarify language referring to a supervisor as a board approved supervisor, to clarify the application and approval process, and establish the supervisory functions that are authorized by holding board approved supervisory status according to license type and specialty recognition held by the supervisor; add rules that revise the general rules of supervision; and, reorder and renumber the section accordingly. The amendment to §781.306 deletes obsolete language. The amendments to §781.313 establish that the criteria for eligibility for the AMEC program is to have scored twice within five points of passing instead of four points and to require that supervision required for participation in the AMEC program be provided by a board approved supervisor. The amendments to §781.314 specify information provided on a license certificate.

The amendments to §781.402 change the title of the section; add language describing services that constitute the practice of social work; and revise the terms used for the independent practice of clinical social work from "private practice" to "independent clinical practice" and revise the term used for non-clinical independent practice from "independent practice" to "independent non-clinical practice." The amendments to §781.405 clarify that sexual exploitation may occur in an agency setting in addition to an independent practice setting and revise language to be consistent with the current definition of independent practice. The amendments to §781.409 clarify the duties of licensees regarding maintaining compliance with laws concerning confidentiality of protected health information and the release of mental health records. The amendments to §781.413 revise language to be consistent with the current definition of independent clinical and non-clinical practice. The amendments to §781.414 revise the methods by which a licensee may provide consumer information to consumers to be consistent with the Occupations Code, §505.252.

The amendments to §781.508 specify that the executive director's decision regarding a request for a waiver of all or part of continuing education requirements may be appealed to the board as opposed to the Professional Development Committee. The amendments to §781.511 change the title of the section; change the term of continuing education sponsor to a continuing education provider; update the rule, indicating that the executive director reviews continuing education provider applications to indicate that the function is provided by department staff; require that continuing education providers provide a list of subcontractors upon renewal or upon request; require continuing education providers to maintain training records for a period of three years as opposed to two years; and renumber the section accordingly. The amendments to §781.512 revise the title of the section; change the term of "Continuing education sponsor" to "Continuing education provider"; define the process of evaluating continuing education providers; provide for the review by a committee of the board for possible rescinding of approved continuing education provider status if a provider is not in compliance with rules regarding continuing education programs; disallow credit toward approval as a supervisor by the board for a completion of a course by a provider after the provider's approval status has been rescinded; and renumber the section accordingly. The amendments to §781.513 change the term of continuing education sponsor to a continuing education provider and update the rule to indicate that the decision of the executive director regarding the acceptability of continuing education from providers approved by another licensing board may be appealed to the appropriate board committee. The amendments to §781.514 revise the number of hours that may not be exceeded during a renewal period for published works and independent study programs. New §781.516 establishes the criteria for approval and renewal of a supervisory training course provider and supervisory training program; establishes rules regarding application for approval; and establishes rules regarding documentation of participation and retention of the documentation. New §781.517 establishes a process for the evaluation of supervisor training course providers and the courses they present; establishes a process for the board to rescind approval of a supervisor training course provider; establishes a process for reapplication for approved supervisor training course provider status once it has been rescinded; and disallows credit toward approval as a supervisor by the board for a completion of a course by a provider after the provider's approval status has been rescinded.

The amendments to §781.604 allow only the respondent to a complaint to request an informal hearing, as opposed to allowing any party to a complaint to request an informal hearing. The amendments to §781.605 reflects the current name of the board committee that reviews complaints filed with the board from "Complaints Committee" to "Ethics Committee."

The amendments to §781.806 allow supervision of licensees on probation by any board approved supervisor with expertise in the licensee's field of practice, as opposed to only LCSWs and to be consistent with supervisory functions authorized by proposed changes in §781.304.

COMMENTS

The board has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period. The commenters were individuals, associations, and/or groups, including the following: National Association of Social Workers--Texas Chapter, Texas Society of Clinical Social Work, Department of State Health Services Children and Pregnant Women program staff, three licensees of the board and one comment came from a member of the public. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments. Commenters were generally in favor of the rules.

The following comments were received from the National Association of Social Workers--Texas Chapter.

Comment: Concerning §781.102(38), the commenter stated that the definition of clinical social work is too broad. The commenter recommended replacing the words "for the welfare of the client and the services rendered" with "for the nature and quality of the services provided to the client."

Response: The board agreed with the comment and modified the definition of clinical social work. Paragraphs (37) - (39) of

the section reflect the revised language and are renumbered for proper sequence. The board also determined that paragraph (64) of the section should be deleted as not accurately reflecting the responsibility of the social worker.

Comment: Concerning §781.402(d) and (e), the commenter recommended that the definition of independent clinical practice should be modified by replacing, "welfare of the client and services rendered" with "nature and quality of the services provided."

Response: The board agreed with the comment and modified the definition of independent clinical practice.

Comment: Concerning §781.512(e), the commenter stated that it is unclear what mechanism would be used for licensees to ascertain whether a continuing education provider's approved status has been rescinded. The commenter suggests that the board address any gap between a licensee attending an event and learning that the providers' stratus had been removed.

Response: The board agreed to review this issue more closely and consider possible process or rule changes which might be needed.

Comment: The commenter also commented on the following rules which were not proposed for change: §§781.402(b), 781.402(c), 781.508(b), and 781.514. The board could not consider revising rules as a result of the comments, but did agree to review the comments during a future review of rules for proposed changes.

The following comments were received from the Texas Society of Clinical Social Workers.

Comment: Concerning §781.102, the commenter did not concur with the addition of a definition for, "Conditions of Exchange," as it is unnecessary and could cause potential problems for social workers in independent practice with a mixed payor population.

Response: The board disagreed with the comment because the term conditions of exchange is used in rule §781.304(12). Section 781.304(12) was not open to a substantive change, therefore the board decided to define the term. No change was made as a result of this comment.

Comment: Concerning §781.303, the commenter indicated support of the waiver of the supervised experience requirement for independent practice recognition, but only if the applicant had two years licensed experience with social work supervision or four years licensed experience without social work experience.

Response: The board disagreed with the comment and adopted the rule as proposed, allowing three years licensed social work experience with the supervision of a licensed mental health professional. No change was made as a result of this comment.

Comment: Concerning §781.402, the commenter expressed support of the recommendations for the practice of baccalaureate social work with the exception of mediation.

Response: The board disagreed with the comment because when a baccalaureate social worker is performing mediation services in the context of court ordered family mediation and other related forms of mediation, the baccalaureate social worker is practicing social work. No change was made as a result of this comment.

Comment: Concerning §781.409, the commenter recommended inclusion of all applicable state laws pertaining to confidentiality.

Response: The board's proposed rule change already lists the state laws that most directly relate to the confidentiality and includes all other state laws not listed. No change was made as a result of this comment.

Comment: Concerning §781.414, the commenter recommended adding the word, "or" to allow for options in the methods of providing consumer information to clients.

Response: The board agreed with the comment and revised the rule to provide clarity of the methods available for social workers to provide consumer information to their clients.

Comment: Concerning §781.512, the commenter supported the recommended changes, with the exception that the executive director should have responsibility for these continuing education provider audits.

Response: The board disagrees with the comments because the department staff provides the support function of continuing education audits. The executive director will continue to coordinate the process of board review of audit results when it is indicated.

Comment: Concerning §§781.508, 781.512(b) - (e), 781.513(b), 781.516(g), and 781.517(d) - (f), the commenter supported the recommendations, but suggested that the word "committee" be replaced by "board".

Response: The board agreed with and adopted language changes that clarified responsibilities and the readability of the rule.

Comment: The commenter also commented on several rules which were not proposed for change. The board could not consider revising rules as a result of the comments, but did agree to review the comments during a future review of rules for proposed changes.

The following comment regarding the rules was received from both individuals and associations:

Comment: Numerous commenters noted that in rule §781.402 the practice of clinical social work by a Licensed Master Social Worker is authorized only in an agency setting and only under clinical supervision. The commenters questioned whether affected social workers are aware of the requirement and, whether affected social workers have access to supervision and whether affected social workers/their agencies have resources to comply with the stipulation.

Response: The board could not consider a rule change at this time since the rule was not proposed for change. The board agreed to review the issue for possible proposed rule revision in the future.

The following comments were received from individual commenters:

Comment: Concerning §781.303, the commenter noted omissions of the requirement to be licensed as a social worker in order for social work experience to qualify a person for the waiver under §781.303(b)(3) and (4) and a duplication of language in §781.303(b)(3). The commenter recommended language to clarify the license requirement.

Response: The board agreed with the comments and made changes to clarify the licensed supervised experience requirement for the waiver.

Comment: Three commenters asked general questions concerning the practice settings and authorized social work activities as a result of the rules as proposed.

Response: The board did not make changes as a result of the comments.

DEPARTMENT COMMENTS

Comments were received by the board from department staff and through discussion during the board rules committee meeting on December 1, 2006. The board agreed to the following changes to clarify intent and improve accuracy of the sections.

Change: Section 781.217(a)(8)(B) was modified by setting the fee to convert an active license to inactive at $30 for the transaction and by setting the fee to reactivate an inactive license at the current renewal fee for the license.

Change: Concerning §781.301(c) - (e) and §781.303(b) and (d), the board agreed to a staff comment that the effective date did not coincide with the end of the fiscal year, as intended, and the date of "August 1, 2007" was changed to "August 31, 2007."

Change: Concerning §781.303(a)(1) and (2), an editorial revision of "Board" to "board" was made to the paragraphs of this section.

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §781.102

STATUTORY AUTHORITY

The amendment is adopted under the Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, and to establish standards of conduct and ethics for license holders; by Occupations Code, §505.203, which authorizes the board to set fees; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

§781.102. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accredited colleges or universities--An educational institution that is accredited by an agency recognized by the Texas Higher Education Coordinating Board.

(2) Act--The Social Work Practice Act, Occupations Code, Chapter 505.

(3) ALJ--A person within the State Office of Administrative Hearings who conducts hearings under this chapter on behalf of the board.

(4) Agency--A public or private employer, contractor or business entity providing social work services.

(5) AMEC--alternative method of examining competency, as referenced in Occupations Code, §505.356(3).

(6) APA--The Administrative Procedure Act, Government Code, Chapter 2001.

(7) Association of Social Work Boards (ASWB)--National organization representing regulatory boards of social work. Administers the national examinations utilized in the assessment for licensure.

(8) Board--Texas State Board of Social Worker Examiners.

(9) Case record--Any information related to a client and the services provided to that client, however recorded and stored.

(10) Client--An individual, family, couple, group or organization that seeks or receives social work services from a person identified as a social worker who is either licensed or unlicensed by the board. An individual, family, couple, group or organization remains a client until the formal termination of services.

(11) Clinical social work--A specialty within the practice of social work that requires the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, and/or persons who are adversely affected by social or psychosocial stress or health impairment. The practice of Clinical Social Work requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions, including severe mental illness in adults and serious emotional disturbances in children. Treatment methods include the provision of individual, marital, couple, family, and group therapy and psychotherapy. Clinical social workers are qualified to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), and other diagnostic classification systems in assessment, diagnosis, and other activities.

(12) Clinical supervision--An interactional professional relationship between a supervisor and a social worker that provides evaluation and direction over the supervisee's practice of clinical social work and promotes continued development of the social worker's knowledge, skills, and abilities to engage in the practice of clinical social work in an ethical and competent manner.

(13) Confidential information--Individually identifiable information obtained from a client or records relating to a client, including the client's identity, demographic information collected from an individual, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of social work services to an individual; the past, present, or future payment for the provision of social work services to an individual; and identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual which is not discloseable under applicable law or court rules of evidence. Client information is "confidential" if it is intended to be disclosed to third persons to further the interest of the client in the diagnosis, examination, evaluation, or treatment, or those reasonably necessary for the transmission of the communication, or those who are participating in the diagnosis, examination, evaluation, or treatment under the direction of the professional, including members of the patient's family.

(14) Completed application--The official social work application form, fees and all supporting documentation which meets the criteria set out in this title (relating to Required Application Materials).

(15) Conditions of exchange--The setting of rates of reimbursement or fee structure and business rules or policies involving issues such as cancellation of appointments, office hours, and management of insurance claims.

(16) Contested case--A proceeding in accordance with the APA and this chapter, including, but not limited to, rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

(17) Counseling--A method used by social workers to assist individuals, couples, families or groups in learning how to solve

problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns.

(18) Consultation--To provide advice, opinions and to confer with other professionals regarding social work practice.

(19) Continuing education--Formal or informal education or trainings, which are oriented to maintain, improve or enhance social work practice.

(20) Council on Social Work Education (CSWE)--The national organization that accredits social work education schools and programs.

(21) Department--Department of State Health Services.

(22) Detrimental to the client--An act or omission of a professional responsibility that is damaging to the physical, mental, or financial status of the client.

(23) Direct practice--The provision of services, research, system linkage, system development, maintenance and enhancement of social and psychosocial functioning of clients.

(24) Dual relationship--Dual or multiple relationships occur when social workers relate to clients in more than one capacity, whether it be before, during or after the professional, social, or business relationship. Dual or multiple relationships can occur simultaneously or consecutively.

(25) Endorsement--The process whereby the board reviews requirements for licensure completed while under the jurisdiction of a different regulatory board from another state. The board may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(26) Examination--A standardized test or examination of social work knowledge, skills and abilities, which has been approved by the board.

(27) Exploitation--An unequal balance is inherent in the client/professional relationship and may be present in the professional/professional relationship. To use this power imbalance for the personal benefit of the professional at the expense of the client or another professional is exploitation. Exploitation may take financial, business, emotional, sexual, verbal, religious and/or relational forms.

(28) Exploitive behavior--A pattern, practice or scheme of conduct that can reasonably be construed as being primarily for the purposes of meeting the needs or being to the benefit of the social worker rather than in the best interest of the client or at the expense of another professional. Exploitation may take financial, business, emotional, sexual, verbal, religious and/or relational forms.

(29) Family systems--An open, on-going, goal-seeking, self-regulating, social system. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, sexual orientation, health and temperament) and its socio-cultural and historic position in its larger environment.

(30) Formal hearing--A hearing or proceeding in accordance with this chapter, including a contested case as defined in this section to address the issues of a contested case.

(31) Flagrant--Obviously inconsistent with what is right or proper as to appear to be a flouting of law or morality.

(32) Fraud--Any misrepresentation or omission by a social worker related to professional qualifications, services, or related activities or information that benefits the social worker.

(33) Full-time experience--Social work services totaling 30 or more hours per week.

(34) Group supervision--Supervision that involves a minimum of two and no more than six supervisees in a supervision hour.

(35) Health care professional--A licensee or any other person licensed, certified, or registered by the State of Texas in a health related profession.

(36) Home study--A formal written evaluation or social study to determine what is the best interest of a minor child or other dependent person.

(37) Independent clinical practice--The provision of clinical social work in independent practice in which the social worker assumes responsibility and accountability for the nature and quality of the services provided to clients, pro bono or in exchange for direct payment or third party reimbursement.

(38) Independent non-clinical practice--The practice of non-clinical social work outside the jurisdiction of an organizational setting, after completion of all applicable supervision requirements, in which the social worker assumes responsibility and accountability for the nature and quality of the services provided to clients, pro bono or in exchange for direct payment or third party reimbursement.

(39) Independent practice--The practice of social work services outside the jurisdiction of an organizational setting, after completion of all applicable supervision requirements, in which the social worker assumes responsibility and accountability for the nature and quality of the services provided to clients, pro bono or in exchange for direct payment or third party reimbursement.

(40) Indirect practice--Work on behalf of the client utilizing negotiation, education, advocacy, administration, research, policy development and resource location that does not involve immediate or personal contact with the clients being served.

(41) Individual supervision--Supervision of one supervisee during the supervision session.

(42) Investigator--A professional utilized by the board in the investigation of allegations of professional misconduct.

(43) LBSW--Licensed Baccalaureate Social Worker.

(44) LCSW--Licensed Clinical Social Worker.

(45) License--A regular, provisional, or temporary license or recognition issued by the board unless the content of the rule indicates otherwise.

(46) Licensee--A person licensed or recognized by the board to perform professional social work practice.

(47) LMSW--Licensed Master Social Worker.

(48) LMSW-AP--Licensed master social worker-advanced practitioner.

(49) Non-clinical social work--The areas of social work practice that include community organization, planning, administration, teaching, research, administrative supervision, non-clinical consultation and other related social work activities.

(50) Part-time--Social work services totaling less than 30 hours per week.

(51) Party--Each person, governmental agency, or officer or employee of a governmental agency named by the ALJ as having a justiciable interest in the matter being considered, or any person, governmental agency, or officer or employee of a governmental agency meeting the requirements of a party as prescribed by applicable law.

(52) Persistently--Existing for a long or longer than usual time or continuously.

(53) Person--An individual, corporation, partnership, or other legal entity.

(54) Pleading--Any written allegation filed by a party concerning its claim or position.

(55) Psychotherapy--The use of treatment methods utilizing a specialized, formal interaction between a clinical social worker and an individual, couple, family, or group in which a therapeutic relationship is established, maintained and sustained to understand intrapersonal, interpersonal and psychosocial dynamics, and the diagnosis and treatment of mental, emotional, and behavioral disorders, conditions and addictions.

(56) Reciprocity--The granting of an official license based on the current status of licensure in a different jurisdiction. Reciprocity is granted based on the formal written agreement between the board and regulatory body in the other jurisdiction.

(57) Recognition--Authorization from the board to engage in the independent or specialty practice of social work services.

(58) Rules--Provisions in this chapter specifying the implementation of statute and operations of the board and individuals affected by the Act.

(59) Sexual contact--Any touching or behavior that can be construed as sexual in nature.

(60) Sexual exploitation--A pattern, practice or scheme of exploitative behavior, which may include sexual contact.

(61) Social Work Case Management--The use of a biopsychosocial perspective to assess, evaluate, implement, monitor and advocate for services on behalf of and in collaboration with the identified client.

(62) Social worker--A person licensed under the Act.

(63) Social work practice--Services and actions performed as an employee, independent practitioner, consultant, or volunteer for compensation or pro bono to effect changes in human behavior, a person's emotional responses, interpersonal relationships, and the social conditions of individuals, families, groups, organizations, and communities. For the purpose of this definition, the practice of social work is guided by special knowledge, acquired through formal social work education development and behavior within the context of the social environment, and methods to enhance the functioning of individuals, families, groups, communities, and social welfare organizations. Social work practice involves the disciplined application of social work values, principles, and methods, including psychotherapy, marriage and family therapy, couples therapy, group therapy, case management, supervision of social work services, counseling, assessment, and evaluation. Social work practice may also be referred to as social work services, of social welfare policies and services, social welfare systems and resources, human services.

(64) Supportive counseling--The methods used by social worker to help individuals create and maintain adaptive patterns. Such methods may include building community resources and networks, linking clients with services and resources, educating clients and informing the public, helping clients identify and build strengths, leading community groups, and providing reassurance and support. This type of social work is not considered clinical social work.

(65) Supervisor, board approved--A person meeting the requirements set out in §781.302 of this title (relating to Clinical Supervision for LCSW and Non-Clinical Supervision for LMSW-AP and Independent Practice Recognition), to supervise a licensee towards the LCSW, LMSW-AP or Independent Practice recognition.

(66) Supervision--The professional interaction between a supervisor and a social worker in which the supervisor evaluates and directs the services provided by the social worker and promotes continued development of the social worker's knowledge, skills and abilities to provide social work services in an ethical and competent manner.

(67) Supervision hour--A supervision hour is a minimum of 60 minutes in length.

(68) Telepractice--Interactive service delivery where the client resides in one location and the professional in another.

(69) Termination--The end of professional services, meetings, and billing for services.

(70) Texas Open Meetings Act--Government Code, Chapter 551.

(71) Texas Public Information Act--Government Code, Chapter 552.

(72) Waiver--The suspension of educational, professional, and/or examination requirements for applicants who meet the criteria for licensure under special conditions based on appeal to the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2007.

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Chair
Texas State Board of Social Worker Examiners
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For further information, please call: (512) 458-7111 x6972

SUBCHAPTER B. THE BOARD

22 TAC §781.215, §781.217

STATUTORY AUTHORITY

The amendments are adopted under the Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, and to establish standards of conduct and ethics for license holders; by Occupations Code, §505.203, which authorizes the board to set fees; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

§781.217. Fees.

(a) The following are the board's fees:

(1) application fee for all licenses, approved supervisory status, waiver of the experience requirement for independent practice recognition, or specialty recognition--$20;

(2) license fee for LBSW, or LMSW--$60 biennially;

(3) renewal fee for LBSW or LMSW--$80 biennially;

(4) license fee for LCSW--$100 biennially;

(5) renewal fee for LCSW--$100 biennially;

(6) additional license fee for specialty recognition (AP or Independent Practice)--$20 biennially;

(7) additional or replacement license fee--$10;

(8) fee for late renewal:

(A) 1-90 days--renewal fee plus fee equal to one-half the current contracted examination fee rounded to the nearest dollar amount; or

(B) 91 days, but less than one year--renewal fee plus fee equal to the current contracted examination fee rounded to the nearest dollar amount;

(9) inactive status conversion fee--$30;

(10) reactivation from inactive status--renewal fee for license and endorsements;

(11) inactive status renewal fee--$30 biennially;

(12) returned check fee--$25;

(13) written license verification fee--$10 per verification copy;

(14) specialty license verification fee--$10 per verification copy;

(15) student loan default reinstatement fee--$35;

(16) continuing education provider application fee--$50 annually;

(17) delinquent child support administrative fee--$35;

(18) legislatively mandated fees per licensee for the operation of the Office of Patient Protection per application and renewal as legislatively established;

(19) legislatively mandated fees per licensee for the boards participation in the Texas On-line per application and renewal as legislatively established;

(20) board approved supervisor fee--$25 annually;

(21) AMEC participant administrative fee--Fee equal to the current contract examination fee;

(22) Petition for re-examination fee--$20 per petition; and

(23) Temporary license fee--$30.

(b) Fees paid to the board by applicants are not refundable except in accordance with §781.305 of this title (relating to Application for Licensure).

(c) Remittances submitted to the board in payment of fees may be in the form of a personal check, cashier's check, or money order; however, repayment of funds after a returned check, including the returned check fee, must be in the form of a cashier's check or money order.

(d) A license which is issued by the board, but for which a check is returned (for example, insufficient funds, account closed, or payment stopped) is invalid. A license will be considered expired and the licensee in violation of board rules until the receipt and processing of the renewal fee and returned check fee by the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jeannie McGuire, LBSW
Chair
Texas State Board of Social Worker Examiners
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For further information, please call: (512) 458-7111 x6972

SUBCHAPTER C. LICENSES AND LICENSING PROCESS

22 TAC §§781.301 - 781.304, 781.306, 781.313, 781.314

STATUTORY AUTHORITY

The amendments are adopted under the Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, and to establish standards of conduct and ethics for license holders; by Occupations Code, §505.203, which authorizes the board to set fees; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

§781.301. Qualifications for Licensure.

(a) The following education and experience is required for the specified licenses and specialty recognitions:

(1) Licensed Clinical Social Worker (LCSW).

(A) Must be licensed as an LMSW.

(B) Obtain 3000 hours of Board approved supervised professional full-time clinical employment experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state.

(C) Complete a minimum of 100 hours of face-to-face supervision, over the course of the 3000 hours of full-time experience, with a board-approved supervisor. Supervised experience must have occurred within the five previous calendar years occurring from the date of application.

(D) Passing score on the clinical exam administered nationally by ASWB.

(2) Licensed Master Social Worker (LMSW).

(A) A doctoral or master's degree in social work from a CSWE accredited social work program.

(B) Passing score on the intermediate or master's exam administered nationally by ASWB.

(3) Licensed Master Social Worker-Advanced Practitioner (LMSW-AP).

(A) Must be licensed as an LMSW.

(B) Obtain 3000 hours of Board approved supervised professional full-time non-clinical employment experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state.

(C) Complete a minimum of 100 hours of face-to-face supervision, over the course of the 3000 hours of full-time experience, with a board-approved supervisor. Supervised experience must have occurred within the five previous calendar years occurring from the date of application.

(D) Passing score on the advanced or advanced generalist examination administered nationally by ASWB.

(4) Licensed Baccalaureate Social Worker (LBSW).

(A) A baccalaureate degree in social work from a CSWE accredited social work program.

(B) Passing score on the basic or Bachelors exam administered nationally by ASWB.

(b) Only a person who is licensed and has been recognized by the board as follows is qualified to provide clinical and non-clinical social work services in employment or independent practice settings.

(1) A LCSW may provide any clinical or non-clinical social work services in either an employment or independent practice setting. A LCSW may work under contract, bill directly for services, and bill third parties for reimbursements for services.

(2) A LMSW-AP may provide any non-clinical social work services in either an employment or an independent practice setting. A LMSW-AP may work under contract, bill directly for services, and bill third parties for reimbursements for services.

(3) A LBSW or LMSW recognized for independent practice may provide any non-clinical social work services in either an employment or an independent practice setting. A LBSW or LMSW recognized for independent practice may work under contract, bill directly for services, and bill third parties for reimbursements for services.

(4) A LBSW or LMSW recognized for independent practice and a LMSW-AP must restrict his or her independent practice to the provision of non-clinical social work services.

(c) After August 31, 2007, a licensee that had not submitted an application for Independent Practice Recognition and an application for waiver of supervised experience requirements, along with the appropriate fees and supporting documentation and whose application is still pending must not engage in any independent practice that falls within the definition of social work practice in §781.102 of this title (relating to Definitions) without being licensed and recognized by the board unless the person is licensed in another profession and acting solely within the scope of that license. If engaged in professional practice under another license, the person may not use the titles "licensed clinical social worker," "licensed master social worker," "licensed social worker," "licensed baccalaureate social worker," or "social work associate" or any other title or initials that states or implies licensure or certification in social work unless one holds the appropriate license or independent practice recognition.

(d) After August 31, 2007, a LBSW or LMSW who is not recognized for independent practice may not provide direct social work services to clients from a location that she or he owns or leases and that is not owned or leased by an employer or other legal entity with responsibility for the client. This does not preclude in home services such as in home health care or the use of telephones or other electronic media to provide services in an emergency.

(e) After August 31, 2007, a LBSW or LMSW who is not recognized for independent practice or is not exempt under subsection (c) of this section, may only practice for remuneration in a direct employment or agency setting and can not work under contract, bill directly to patients or to third party payers, unless the LBSW or LMSW is under a formal supervision plan approved by the board.

(f) Applicants for a license must complete the board's jurisprudence examination and submit proof of completion at the time of application. The jurisprudence examination must have been completed no more than six months prior to the date of application.

§781.303. Independent Practice Recognition.

(a) A LBSW or LMSW who seeks to obtain board approval for the recognition of independent practice shall meet requirements and parameters set by the board.

(1) To qualify for the recognition of independent practice, as a LBSW, an individual, after licensure, shall obtain 3000 hours of board approved supervised full-time experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state. Supervised experience must have occurred within the five previous calendar years occurring from the date of application.

(2) To qualify for the recognition of independent practice, as a LMSW, an individual, after licensure, shall obtain 3000 hours of board approved supervised full-time experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state. Supervised experience must have occurred within the five previous calendar years occurring from the date of application.

(3) To qualify for independent practice the licensee must complete a minimum of 100 hours of face-to-face supervision, over the course of the 3000 hours of full-time experience, with a board approved supervisor. A licensee who plans to apply for independent practice recognition shall:

(A) submit a supervisory plan to the board for approval by the appropriate committee of the board or executive director within 30 days of initiating supervision. If the licensee fails to submit a supervisory plan, then the licensee will need to submit documentation regarding dates, times and summary of all supervisory sessions at the time the licensee makes application for the upgrade.

(B) submit a current job description from the agency the social worker is employed in with a verification of authenticity from the agency director or their designee on agency letterhead.

(C) submit a supervision verification form to the board within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend the supervisee for recognition as an independent practice, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations in its evaluation of qualifications of the supervisee.

(D) submit a new supervisory plan within 30 days of changing supervisors.

(E) An individual providing supervision to a LBSW shall be a LBSW, LMSW, LMSW-AP or LCSW. An individual providing supervision to a LMSW shall be a LMSW, LMSW-AP or LCSW. In addition to the required licensure, the supervisor shall be board-approved and have attained the recognition of independent practice.

(4) A person who has obtained only the temporary license may not begin the supervision process until the issuance of the regular license.

(5) The board may use the twenty common law factors developed by the Internal Revenue Service (IRS) as part of their determination process regarding whether a worker is an independent contractor or an employee.

(A) No instructions to accomplish a job.

(B) No training by the hiring company.

(C) Others can be hired by the independent contractor (sub-contracting).

(D) Independent contractor's work is not essential to the company's success or continuation.

(E) No time clock.

(F) No permanent relationship between the contractor and company.

(G) Independent contractors control their own workers.

(H) Independent contractor should have enough time available to pursue other jobs.

(I) Independent contractor determines location of work.

(J) Independent contractor determines order of work.

(K) No interim reports.

(L) No hourly pay.

(M) Independent contractor often works for multiple firms.

(N) Independent contractor is often responsible for own business expenses.

(O) Own tools.

(P) Significant investment.

(Q) Services available to the public by having an office and assistants; having business signs; having a business license; listing their services in a business directory; or advertising their services.

(R) Profit or loss possibilities.

(S) Can't be fired.

(T) No compensation if the job isn't done.

(b) A LBSW or LMSW who seeks to obtain a waiver of the supervision and experience requirement for independent practice recognition as set forth by the board in subsection (a)(1) - (3) of this section must submit an application for licensure/upgrade/specialty recognition and the Special Application For Waiver of Supervision and Experience Requirements, along with required documentation and the application fees no later than August 31, 2007. An application for waiver will be evaluated and either approved or denied. No partial credit will be given toward the supervised experience requirement, if an application for the waiver is denied. In order to be granted the waiver, the LBSW or LMSW must fully meet the following requirements and parameters set by the board:

(1) two years full time (paid or voluntary) social work experience while fully licensed as a social worker under the supervision of a licensed social worker (LCSW, LMSW-AP, LMSW, LBSW);

(2) three years full time (paid or voluntary) social work experience while fully licensed as a social worker under the supervision of a licensed mental health professional (LCSW, LMSW-AP, LMSW, LBSW, LMFT, LPC, LCDC, Psychologist, Psychiatrist, Psychiatric Nurse or other mental health professional accepted by the board);

(3) four years full time (paid or voluntary) social work experience while fully licensed as a social worker in an agency setting with or without the supervision of a licensed mental health professional; or

(4) four years full time (paid or voluntary) social work experience while fully licensed as a social worker without supervision in a setting that meets the criteria in subsection (a)(5) of this section.

(c) An applicant may appeal staff decision regarding their qualifications toward the waiver to the appropriate board committee within 30 days of receipt of staff decision. The decision of the board committee is final.

(d) A LBSW or LMSW who applies for the independent practice recognition and the waiver of experience requirements before August 31, 2007, must cease and desist independent practice immediately if his or her application for the waiver of the supervised experience requirement is finally denied. An LBSW or LMSW whose application has been denied may practice independently when a supervision plan for independent practice has been approved by the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2007.

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Jeannie McGuire, LBSW
Chair
Texas State Board of Social Worker Examiners
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For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER D. CODE OF CONDUCT AND PROFESSIONAL STANDARDS OF PRACTICE

22 TAC §§781.402, 781.405, 781.409, 781.413, 781.414

STATUTORY AUTHORITY

The amendments are adopted under the Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, and to establish standards of conduct and ethics for license holders; by Occupations Code, §505.203, which authorizes the board to set fees; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

§781.402. The Practice of Professional Social Work.

(a) Practice of Baccalaureate Social Work--The application of social work theory, knowledge, methods, ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. Baccalaureate Social Work is basic generalist practice that includes interviewing, assessment, planning, intervention, evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, problem solving, su-

pervision, consultation, education, advocacy, community organization and the development, implementation, and administration of policies, programs and activities.

(b) Practice of Clinical Social Work--A specialty within the practice of social work that requires the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, and/or persons who are adversely affected by social or psychosocial stress or health impairment. The practice of Clinical Social Work requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions, including severe mental illness in adults and serious emotional disturbances in children. The practice of Clinical Social Work acknowledges the practitioners ability to engage in Baccalaureate Social Work practice and Master's Social Work Practice. Treatment methods include the provision of individual, marital, couple, family, and group therapy mediation, counseling, supportive counseling, direct practice, and psychotherapy. Clinical social workers are qualified to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), and other diagnostic classification systems in assessment, diagnosis, and other activities. The practice of Clinical Social Work may include independent clinical practice and the provision of clinical supervision.

(c) Practice of Master's Social Work--is the application of social work theory, knowledge, methods and ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. Master's Social Work practice requires the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation and evaluation, case management, mediation, counseling, supportive counseling, direct practice, information and referral, supervision, consultation, education, research, advocacy, community organization and the development, implementation, and administration of policies, programs and activities. The Practice of Master's Social Work may include the Practice of Clinical Social Work under clinical supervision. The practice of Master's Social Work acknowledges the practitioners ability to engage in Baccalaureate Social Work practice.

(d) Independent Non-Clinical Practice --The practice of non-clinical social work outside the jurisdiction of an organizational setting, after completion of all applicable supervision requirements, in which the social worker assumes responsibility and accountability for the nature and quality of the services provided to clients, pro bono or in exchange for direct payment or third party reimbursement.

(e) Independent Clinical Practice--The provision of clinical social work in independent practice wherein the in which the social worker assumes responsibility and accountability for the nature and quality of the services provided to clients, pro bono or in exchange for direct payment or third party reimbursement.

§781.414. Consumer Information.

(a) A licensee shall inform each client of the name, address, and telephone number of the board for the purpose of reporting violations of the Act or this chapter:

(1) on each registration form;

(2) on each application;

(3) on a written contract for services;

(4) on a sign prominently displayed in each place of business; or

(5) in a bill for services provided.

(b) The board shall make consumer information available to the public.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jeannie McGuire, LBSW
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Texas State Board of Social Worker Examiners
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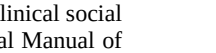

SUBCHAPTER E. LICENSE RENEWAL AND CONTINUING EDUCATION

22 TAC §§781.508, 781.511 - 781.514, 781.516, 781.517

STATUTORY AUTHORITY

The amendments and new sections are adopted under the Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, and to establish standards of conduct and ethics for license holders; by Occupations Code, §505.203, which authorizes the board to set fees; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

§781.508. Hour Requirements for Continuing Education.

(a) A licensee must complete a total of 30 clock-hours of continuing education biennially obtained from board approved continuing education providers.

(b) As part of the required 30 clock-hours, a licensee must complete a minimum of six clock-hours of continuing education in professional ethics and social work values during the biennial renewal period.

(c) A clock-hour is defined as 60 minutes of standard time.

(d) A licensee may earn credit for ethics as a presenter or a participant.

(e) On petition by a licensee, the executive director may waive part, but not all, of the continuing education renewal requirements for good and just cause or may permit the licensee an additional period of time in which to complete all continuing education requirements. In all cases, the decision of the executive director may be appealed to the board. Should the board overturn the decision of the executive director, the board may elect to waive the late fees accrued or determine that the late fees should be paid by the licensee. Should the decision of the executive director be upheld by the board and the licensee be denied in the appeal, all late fees accrued will apply.

§781.512. Evaluation of Continuing Education Providers.

(a) The board may evaluate any approved provider or applicant at any time to ensure compliance with requirements of this section.

(b) Department staff shall audit approved continuing education providers on a regular basis and shall report the audit results to

the board. During the audit, staff shall request documentation from the continuing education provider regarding compliance with §781.511 of this title (relating to Requirements for Continuing Education Providers).

(c) Department staff shall notify a continuing education provider of the results of an audit. If the continuing education provider is determined to be in non-compliance, the provider shall implement a plan of correction to address audit deficiencies. Documentation that corrective measures have been taken shall be submitted to the board within 30 days of the date of the board's notice regarding the need for corrective action.

(d) The board shall review the approval status of continuing education providers that are not in compliance and that have not taken corrective action.

(e) The board may rescind the approval status of a continuing education provider.

(f) Complaints regarding continuing education programs offered by approved continuing education providers may be submitted in writing to the executive director. Complaints may result in an audit of a continuing education provider and may be referred to the appropriate committee of the board for appropriate action.

(g) A provider whose approval status has been rescinded by the board may reapply for approval on or after the 91st day following the board action. The provider must provide documentation that corrective action has been taken and that the provider's programs will be presented in compliance with §781.511 of this title. An appropriate committee of the board shall review reapplication by a formerly denied continuing education provider.

(h) Continuing education hours received from a provider whose approval has been rescinded or denied by the board but accepted by another licensing or approval entity shall not be acceptable for use of renewal of the social worker license.

(i) Continuing education hours received from providers who failed to meet the renewal requirements of the board shall not be acceptable for use in the renewal of the social worker's license.

(j) Fees paid by a provider whose approval has been rescinded or denied are non-refundable.

§781.513. Acceptance of Continuing Education Approved by Another Licensing Board.

(a) A licensee may request in writing that the board consider approval of continuing education hours provided by a non-approved provider. The licensee shall submit documentation as specified in §781.511(e) of this title (relating to Requirements for Continuing Education Providers) for the board to review and a fee equal to the continuing education provider application fee.

(b) The executive director will review the documentation and notify the licensee in writing whether the program(s) are acceptable as credit hours. In all cases, the decision of the executive director may be appealed to the board.

§781.516. Requirements of Supervisor Training Course Providers.

(a) A supervisor training course provider must be an approved continuing education provider or exempt under §781.511 of this title (relating to Requirements for Continuing Education Providers) to apply for approval as a supervisor training course provider.

(b) A supervisor training course provider must be approved under this section to offer supervisor training courses.

(c) A provider seeking approval as a supervisor training course provider shall file an application on board forms. The board shall maintain a list of supervisor training course providers and make the list available to licensees on the board's web site.

(d) The applicant shall certify on the application that:

(1) all supervisor training courses offered by the supervisor training course provider for credit from the board will comply with the criteria in this section; and

(2) the supervisor training course provider will be responsible for verifying attendance at each program and provide a certificate of attendance as set forth in subsection (j) of this section.

(e) A supervisor training course offered for credit from the board shall:

(1) provide the recipient of the training with the professional skills and knowledge necessary to for the recipient to fulfill the supervision duties expected by the board in supervisory roles authorized by the board;

(2) be developed and presented by persons who are appropriately knowledgeable in the subject matter of the program and training techniques; and

(3) specify the course objectives, course content, and teaching methods to be used.

(f) The supervisor training course provider must document each course's compliance with subsection (d) of this section and maintain that documentation for a period of three years.

(g) The board will review the supervisor training course provider application, notify the applicant of any deficiencies or grant approval, and indicate the supervisor training course provider approval number to be noted on all certificates of attendance. In order to be approved, an applicant must demonstrate compliance with the board's course content guidelines.

(h) Each supervisor training course shall provide a mechanism for evaluation of the program by the participants. The evaluation may be completed on-site immediately following the program presentation or an evaluation questionnaire may be distributed to participants to be completed and returned to the supervisor training course provider by mail. The supervisor training course provider and the instructor, together, shall review the evaluation outcomes and revise subsequent programs accordingly. The supervisor training course provider shall keep all evaluations for three years and allow the board to review the evaluations on request.

(i) A supervisor training course provider maintains approval by the board until the provider elects to be removed as an approved provider, as long as the provider has maintained status as a continuing education provider, or is exempt, and as long as the provider's approval status has not been rescinded by the board.

(j) It shall be the responsibility of a supervisor training course provider to provide each participant in a program with a legible certificate of attendance following the completion of the course. The certificate of attendance shall contain:

(1) the name of the supervisor training course provider and approval number;

(2) the name of the participant;

(3) the title of the program;

(4) the date and place of the program;

(5) the signature of the supervisor training course provider or its representative; and

(6) board contact information.

(k) The supervisor training course provider shall maintain attendance records for not less than three years.

(l) The supervisor training course provider shall be responsible for assuring that no licensee receives credit unless the participant actually attended the program and demonstrated competency in the training objectives.

§781.517. Evaluation of Supervisor Training Course Providers.

(a) The board may evaluate any approved supervisor training provider at any time to ensure compliance with requirements of this section.

(b) Department staff shall audit approved supervisor training courses on a regular basis and shall report the audit results to a board committee. During the audit, staff shall request documentation from the supervisor training provider regarding compliance with §781.516 of this title (relating to Requirements of Supervisor Training Course Providers).

(c) Department staff shall notify supervisor training providers of the results of the audit. If the supervisor training provider is determined to be in non-compliance, the provider shall implement a plan of correction to address audit deficiencies. Documentation that corrective measures have been taken shall be submitted to the board within 30 days of the date of the board's notice regarding the need for corrective action.

(d) The board shall review the approval status of supervisor training providers that are not in compliance and that have not taken corrective action.

(e) The board may rescind the approval status of a supervisor training provider.

(f) Complaints regarding supervisor training courses offered by approved supervisor training providers may be submitted in writing to the executive director. Complaints may result in an audit of a supervisor training course provider and may be referred to the board for appropriate action.

(g) A supervisor training course provider whose approval status has been rescinded by the board may reapply on or after the 91st day following the board action. The provider must provide documentation that the corrective action has been taken and that the provider's courses will be presented in compliance with §781.516 of this title.

(h) Supervisory Training received from a provider whose approval status has been rescinded or denied by the board but accepted by another licensing or approval entity shall not be acceptable for use toward the requirements of §781.304 of this title (relating to Recognition as a Board Approved Supervisor and Supervision Process).

(i) Supervisory training received from a provider shall not be acceptable toward the requirements of §781.304 of this title if the provider has not maintained approval status with the board.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2007.

TRD-200700425

Jeannie McGuire, LBSW

Chair

Texas State Board of Social Worker Examiners

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Proposal publication date: September 29, 2006

For further information, please call: (512) 458-7111 x6972

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SUBCHAPTER F. COMPLAINTS AND VIOLATIONS

22 TAC §781.604, §781.605

STATUTORY AUTHORITY

The amendments are adopted under the Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, and to establish standards of conduct and ethics for license holders; by Occupations Code, §505.203, which authorizes the board to set fees; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jeannie McGuire, LBSW

Chair

Texas State Board of Social Worker Examiners

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SUBCHAPTER H. SANCTION GUIDELINES

22 TAC §781.806

STATUTORY AUTHORITY

The amendment is adopted under the Occupations Code, §505.201, which authorizes the board to adopt rules necessary to perform the board's duties, and to establish standards of conduct and ethics for license holders; by Occupations Code, §505.203, which authorizes the board to set fees; and by Occupations Code, §505.404, which requires the board to establish mandatory continuing education requirements for license holders.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Jeannie McGuire, LBSW
Chair
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PART 37. TEXAS BOARD OF ORTHOTICS AND PROSTHETICS

CHAPTER 821. ORTHOTICS AND PROSTHETICS

22 TAC §§821.2, 821.5, 821.33, 821.35

The Texas Board of Orthotics and Prosthetics (board) adopts amendments to §§821.2, 821.5, 821.33, and 821.35, concerning the licensure and regulation of orthotics and prosthetics, without changes to the proposed text as published in the October 27, 2006, issue of the *Texas Register* (31 TexReg 8821), and therefore the sections will not be republished.

BACKGROUND AND PURPOSE

The sections are amended to implement provisions of House Bill 2680, 79th Legislature, Regular Session (2005), codified in Occupations Code, Chapter 112, which requires the board to provide reduced fees and continuing education requirements for retired health professionals, including licensed orthotists and prosthetists, who are engaged in the provision of voluntary charity care. In addition, the proposed rules increase the amount of allowable self-study continuing education credits to 50 percent.

SECTION-BY-SECTION SUMMARY

Amendments to §§821.2, 821.5, 821.33, and 821.35 implement provisions of House Bill 2680, 79th Legislature, Regular Session (2005), codified in Occupations Code, Chapter 112. Section 821.2 defines "voluntary charity care" as practice of orthotics and prosthetics without compensation. Section 821.5 sets the amount of the fees for a retired licensees providing voluntary charity care at $150 for a prosthetist or orthotist and at $200 for a prosthetist/orthotist. Section 821.33 defines "retired prosthetist and/or othotist performing voluntary charity care" as a person at least 55 years of age who is not performing orthotics or prosthetics for compensation and who has informed the department of the intent to retire and to provide only voluntary care. The same section also provides the process for renewal and continuing education for such retirees and a procedure for returning to compensated work.

Additional amendments to §821.35 increase the amount of allowable self-study continuing education credits from 25 percent to 50 percent. The amount of required live instructor-directed continuing education hours was reduced from 75 percent to 50 percent. Retired licensees performing voluntary charity care are exempted from the 50 percent requirement

COMMENTS

No comments were received during the comment period concerning the proposed amendments.

STATUTORY AUTHORITY

The amendments are adopted under Occupations Code, Chapter 605, which provides the Texas Board of Orthotics and Prosthetics with the authority to adopt rules concerning the regulation of orthotics and prosthetics.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 12, 2007.

TRD-200700428
Richard Neider
Presiding Officer
Texas Board of Orthotics and Prosthetics
Effective date: March 4, 2007
Proposal publication date: October 27, 2006
For further information, please call: (512) 458-7111 x6972

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TITLE 25. HEALTH SERVICES

PART 7. TEXAS MEDICAL DISCLOSURE PANEL

CHAPTER 601. INFORMED CONSENT

25 TAC §§601.2, 601.3, 601.6

The Texas Medical Disclosure Panel (panel) adopts amendments to §§601.2, 601.3, and 601.6 concerning informed consent without changes to the proposed text as published in the October 27, 2006, issue of the *Texas Register* (31 TexReg 8824) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments are necessary to comply with Texas Civil Practice and Remedies Code, §74.102, which requires the panel to determine which risks and hazards related to medical care and surgical procedures must be disclosed by health care providers or physicians to their patients or persons authorized to consent for their patients, and to establish the general form and substance of such disclosure. The sections cover procedures requiring full disclosure of specific risks and hazards - List A, procedures requiring no disclosure of specific risks and hazards - List B, disclosure and consent form for medical and surgical procedures, disclosure and consent form for radiation therapy, and disclosure and consent form for hysterectomy.

SECTION-BY-SECTION SUMMARY

Amendments to §601.2 add procedures and risks and hazards for anesthesia, the digestive system treatments and procedures, the endocrine system treatments and procedures, and the hematic and lymphatic system. Amendments to §601.3 add and rename procedures relating to the digestive system. Amendments to §601.6 add a historical item related to adoption of rules in October 2005.

COMMENTS

The panel did not receive any comments regarding the proposed rules during the comment period.

STATUTORY AUTHORITY

The amendments are adopted under the Texas Civil Practice and Remedies Code, §74.102, which provides the Texas Medical Disclosure Panel with the authority to prepare lists of medical treatments and surgical procedures that do and do not require disclosure by physicians and health care providers of the possible risks and hazards and to prepare the form(s) for the treatments and procedures which do require disclosure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Ralph Anderson, M.D.
Chair
Texas Medical Disclosure Panel
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For further information, please call: (512) 458-7111 x6972

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 19. ELECTRONIC REPORTING

The Texas Commission on Environmental Quality (TCEQ or commission) adopts new §§19.1, 19.3, 19.10, 19.12, and 19.14. Sections 19.1 and 19.10 are adopted *with changes* to the proposed text as published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7235). Sections 19.3, 19.12, and 19.14 are adopted *without changes* to the proposed text and will not be republished.

The new sections will be submitted to the United States Environmental Protection Agency (EPA) as revisions to the Texas State Implementation Plan and as part of a program approval application for all of the commission's federally authorized, delegated, or approved programs.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purpose of the rules is to implement the United States Environmental Protection Agency's (EPA) new Cross Media Electronic Reporting Rule (CROMERR) as published in the October 13, 2005, issue of the *Federal Register* (70 FR 59848 - 59889), which became effective January 11, 2006. EPA finalized CROMERR to establish the framework for federal acceptability of electronic reports from regulated entities in order to satisfy specific document submission requirements from EPA regulations. Since states are delegated or authorized to implement certain federal programs, states must seek EPA approval to accept electronic documents for environmental programs that EPA has delegated, authorized, or approved states to administer in accordance with CROMERR. CROMERR does not require that any document or report be submitted electronically and it does not require that states receive electronic documents or reports. CROMERR establishes electronic reporting as an acceptable regulatory alternative and establishes requirements to assure that electronic documents are as legally enforceable as their paper counterparts. Where states intend to receive documents or reports electronically, CROMERR specifies criteria for their acceptable submission in order to ensure federal enforceability. Because CROMERR impacts the commission's authorized programs, creating Chapter 19 in Title 30 of the Texas Administrative Code to apply to all of those programs will minimize the need to revise rules for every authorized program now and in the future if EPA amends CROMERR. The process by which the TCEQ must obtain authorization for its electronic reporting program is generally the same process the agency follows in seeking approval for its environmental permitting programs. In the case of CROMERR, however, EPA has established a streamlined process that TCEQ can use to obtain such approval. That process includes a technical paper outlining how TCEQ's electronic document receiving system, and any known future enhancements, meets the requirements of CROMERR. The application must also include certification from the Office of the Attorney General that the rules and statutes in force in Texas are adequate to meet the requirements of CROMERR. This certification cannot take place until after the TCEQ rulemaking is effective. The TCEQ has until October 13, 2007, to apply for approval to continue accepting electronic reports and applications for authorized programs for which the agency is currently receiving electronic reporting. The EPA has 75 days to determine whether the documents are administratively complete. Once the EPA determines that Texas has an administratively complete package, they have 360 days to determine if Texas has met the requirements of CROMERR. If EPA does not respond within the time frame, the system is automatically approved. For federally authorized programs not currently utilizing an electronic receiving system, there is no deadline specified; however, these programs may not initiate such systems until the agency receives approval under CROMERR.

The rules establish a system for authorized programs to accept electronic submittal of reports, permit applications, and other specified documents using the commission's electronic document receiving system. These rules establish that a person, as defined in 30 TAC §3.2(25), Definitions, who fails to comply with electronic reporting procedures will be subject to the same level of enforcement as one who fails to submit written documents as required.

SECTION BY SECTION DISCUSSION

The commission adopts administrative changes throughout these sections to be consistent with Texas Register requirements and other agency rules and guidelines and to conform to the drafting standards in the *Texas Legislative Council Drafting Manual*, August 2006.

The commission adopts new Chapter 19, Electronic Reporting, to comply with the EPA's new CROMERR as published in the October 13, 2005, issue of the *Federal Register* (70 FR 59848 - 59889), which became effective January 11, 2006. The commission adopts the rules to define 11 terms, outline the applicability of the rules, explain the process of electronic signatures, and describe enforcement remedies for noncompliance.

Subchapter A - General Provisions

§19.1. Definitions.

Section 19.1 incorporates the definitions for: authorized program; copy of record; electronic document; electronic document receiving system; electronic signature; electronic signature agreement; electronic signature device; federal program; state

program; handwritten signature; and signatory. Since proposal, the commission added that obligations on the individual's part are included within the electronic signature agreement.

§19.3. Applicability.

Section 19.3 sets forth the applicability of Chapter 19 to persons who submit electronic final documents to the commission to comply with regulation. This section also affirms that the chapter will apply to federally authorized programs and to state programs for which the commission has announced on its public Web site that it is accepting specified electronic documents. A person may submit documents electronically only if such announcement has been made. Electronic documents must be submitted to the commission according to the requirements of Chapter 19 and following the requirements of the commission's electronic document receiving system. The commission also adopts this rule to affirm that documents submitted via facsimile, magnetic, or optical media are not subject to Chapter 19, consistent with CROMERR, and are, therefore, exempt from the requirements of this chapter.

Subchapter B - Electronic Reporting Requirements

§19.10. Use of Electronic Document Receiving System.

Section 19.10 sets forth the mandate that applicable electronic documents must be submitted according to the requirements of Chapter 19 using the commission's electronic document receiving system. It further affirms a person may not allow another individual to use the electronic signature device unique to his or her signature. Since proposal, the commission added that individuals desiring to use an electronic signature device must execute an electronic signature agreement with handwritten wet ink signature or by using an electronic identity verification system utilized by the commission.

§19.12. Authorized Electronic Signature.

Section 19.12 affirms that when the electronic signature device is used to create an individual's electronic signature, the code or mechanism must be unique to that individual at the time the signature is created and the individual must be uniquely entitled to use it. The section also sets forth the directive that a signatory will protect the electronic signature device from compromise and promptly report any evidence discovered that the device has been compromised. An electronic signature device is compromised if the code or mechanism is available for use by any other individual. It further requires that electronic documents must bear a valid electronic signature if a signature would be required by the regulatory program on the paper document. This rulemaking stipulates an electronic signature on an electronic document is valid if: it has been created with an electronic signature device that the signatory is uniquely entitled to use for signing; the device has not been compromised; and the signatory is authorized to sign the document. This section establishes that the signatory intended to sign the document and submit it to the commission by the presence of an electronic signature.

§19.14. Enforcement.

Section 19.14 affirms that an electronic signature is the legal equivalent of a handwritten signature. Section 19.14 affirms that a person is subject to appropriate penalties, fines, or other remedies under the commission rules or applicable statutes for failure to comply with a reporting requirement if the individual reports electronically and fails to comply with the applicable provisions for electronic reporting. This section affirms that nothing in Chapter 19 limits the use of electronic documents or information derived from electronic documents as evidence in enforcement proceedings.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code. A "major environmental rule" is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The primary purpose of this rulemaking action is to implement the EPA's new CROMERR as published in the *Federal Register* on October 13, 2005. The primary goal of this rulemaking is to allow the commission to establish a voluntary system for the receipt of electronic documents under the commission's federally authorized programs and designated state programs and to provide standards of compliance and enforcement. The rulemaking is procedural in nature and does not address environmental risks or exposures. Therefore, the rulemaking does not constitute a major environmental rule and thus is not subject to a formal regulatory analysis. The commission solicited public comment on the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission completed a takings impact assessment for the rulemaking action under Texas Government Code, §2007.043. The specific primary purpose of this rulemaking is to implement the EPA's CROMERR and provide standards of compliance and enforcement for the commission to receive electronic reports and other documents under federally authorized programs and designated state programs. Promulgation and enforcement of the adopted rules will not affect private real property, because the adopted rulemaking is related to the commission's procedural rules, rather than substantive requirements. Implementation of the amendments will not result in any taking of real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, nor will it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adopted rule is not subject to the Texas Coastal Management Program. The commission invited public comment regarding the consistency of the rules with the CMP. No comments were received regarding the consistency of the rules with the CMP.

EFFECT ON SITES SUBJECT TO THE FEDERAL OPERATING PERMITS PROGRAM

The adopted rules may affect owners and operators subject to the federal operating permits program. If the executive director, in the future, announces that it will accept certain reports required by operating permits electronically, owners and operators will have the option to use the commission's electronic document receiving system in lieu of submitting paper documentation.

PUBLIC COMMENT

The proposal was published in the September 8, 2006, issue of the *Texas Register* (31 TexReg 7235). The commission held a public hearing on October 3, 2006 and on December 4, 2006. The comment period closed on December 4, 2006. The commission received comments from the Environmental Protection Agency (EPA).

RESPONSE TO COMMENTS

EPA supported adding the proposed Electronic Reporting regulations to the SIP and other air programs and congratulated Texas on being the first to propose such air regulations. EPA noted that the state's proposal does not address the National Emission Standards for Hazardous Air Pollutants for source categories (40 CFR Part 63). EPA commented that the proposed definition for electronic signature agreement does not appear to reference the requirements of proposed §19.12 nor does the proposed §19.12 appear to reference the proposed definition. EPA further stated that the definition lacks acknowledgement of an individual's obligations connected with preventing compromise of the electronic signature device (§19.1).

The commission did not make any changes to the rule in response to the comment regarding the National Emission Standards for Hazardous Air Pollutants because it is outside the scope of the rulemaking which is to specifically address electronic reporting. The commission agrees with EPA's other comments and has added to the definition that obligations on the individual's part are included within the electronic signature agreement. The commission also made a change to §19.10(b) to state that individuals desiring to use an electronic signature device must execute an electronic signature agreement with handwritten wet ink signature or by using an electronic identity verification system utilized by the commission. The commission appreciates EPA's support.

SUBCHAPTER A. GENERAL PROVISIONS

30 TAC §19.1, §19.3

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, which allows the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state; §5.128, which authorizes the commission to encourage the use of electronic reporting; §26.011, which authorizes the commission to adopt rules regulating water quality; §26.345, which authorizes the commission to adopt rules regulating petroleum storage tanks; §27.019, which authorizes the commission to adopt rules regulating underground injection wells; §28.011, which authorizes the commission to make and enforce rules for the protection of underground water; §26.040, which authorizes the commission to adopt rules necessary to implement a general permit program for water quality; and §37.002, which authorizes the commission to adopt rules for the occupational licensing and registration program; Texas Health and Safety Code, §382.017, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act; §341.031, which authorizes the commission to adopt and enforce rules regulating public drinking water and implementing the Federal Safe Drinking Water Act; §361.024, which authorizes the commission to adopt rules for the management and control of solid waste; §361.121, which requires the commission to establish an electronic reporting system for holders of permits for the land application of sludge; §371.028, which authorizes the commission to adopt rules regulating management of used oil; and §374.051, which authorizes the commission to adopt rules to administer and enforce the dry cleaner program and the Texas Business and Commerce Code, §43.007 (electronic document recognition), which provides legal recognition of electronic records, electronic signatures, and electronic contracts.

The adopted new sections implement Texas Water Code, §5.128, relating to electronic reporting; and CROMERR, the federal program for electronic reporting, 40 Code of Federal Regulations Parts 3, 9, 51, 60, 70, 71, 123, 142, 145, 162, 233, 257, 258, 271, 281, 403, 501, 745, and 763.

§19.1. Definitions.

In addition to the terms defined in Chapter 3 of this title (relating to Definitions), the following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Authorized program--A federal program that the United States Environmental Protection Agency (EPA) has delegated, authorized, or approved the State of Texas to administer, or a program that the EPA has delegated, authorized, or approved the State of Texas to administer in lieu of a federal program, under other provisions of 40 Code of Federal Regulations and such delegation, authorization, or approval has not been withdrawn or expired.

(2) Copy of record--A true and correct copy of an electronic document received by an electronic document receiving system, which can be viewed in a human-readable format that clearly and accurately associates all the information provided in the electronic document with descriptions or labeling of the information. A copy of record includes:

(A) all electronic signatures contained in or associated with that document;

(B) the date and time of receipt; and

(C) any other information used to record the meaning of the document or the circumstances of its receipt.

(3) Electronic document--Any information that is submitted in digital form to satisfy requirements of an authorized program or other designated state programs. Information may include data, text, sounds, codes, computer programs, software, or databases.

(4) Electronic document receiving system--A set of apparatus, procedures, software, or records used to receive electronic documents.

(5) Electronic signature--Any information in digital form that is included in or associated with an electronic document for the purpose of expressing the same meaning and intention as would a handwritten signature if affixed to an equivalent paper document with the same reference to the same content.

(6) Electronic signature agreement--A document drafted by the executive director and signed by an individual with respect to an electronic signature device that the individual will use to create his or her electronic signature and whereon the individual acknowledges the obligations connected with preventing compromise of the electronic signature device.

(7) Electronic signature device--A code or other mechanism that is used to create electronic signatures.

(8) Federal program--Any program administered by the United States Environmental Protection Agency under any provision of 40 Code of Federal Regulations.

(9) State program--Any program, other than a federal program administered by the United States Environmental Protection Agency under any provision of 40 Code of Federal Regulations, that is implemented by the commission under the Texas Water Code, Texas Health and Safety Code, and other laws of the State of Texas.

(10) Handwritten signature--The scripted name or legal mark of an individual, made by that individual with a marking or writing instrument such as a pen or stylus and executed or adopted with the present intention to authenticate a writing in a permanent form.

(11) Signatory--An individual authorized to and who signs a document using a format acceptable to the commission.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2007.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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For further information, please call: (512) 239-0177

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SUBCHAPTER B. ELECTRONIC REPORTING REQUIREMENTS

30 TAC §§19.10, 19.12, 19.14

STATUTORY AUTHORITY

The new sections are adopted under Texas Water Code, §5.103, which allows the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state; §5.128, which authorizes the commission to encourage the use of electronic reporting; §26.011, which authorizes the commission to adopt rules regulating water quality; §26.040, which authorizes the commission to adopt rules necessary to implement a general permit program for water quality; §26.345, which authorizes the commission to adopt rules regulating petroleum storage tanks; §27.019, which authorizes the commission to adopt rules regulating underground injection wells; §28.011, which authorizes the commission to make and enforce rules for the protection of underground water; and §37.002, which authorizes the commission to adopt rules for the occupational licensing and registration program; Texas Health and Safety Code, §382.017, which authorizes the commission to adopt rules consistent with the policy and purpose of the Texas Clean Air Act; §341.031, which authorizes the commission to adopt and enforce rules regulating public drinking water and implementing the Federal Safe Drinking Water Act; §361.024, which authorizes the commission to adopt rules for the management and control of solid waste; §361.121, which requires the commission to establish an electronic reporting system for holders of permits for the land application of sludge; §371.028, which authorizes the commission to adopt rules regulating management of used oil; and §374.051, which authorizes the commission to adopt rules to administer and enforce the dry cleaner program, and the Texas Business and Commerce Code, §43.007 (electronic document recognition), which provides legal recognition of electronic records, electronic signatures, and electronic contracts.

The adopted new sections implement Texas Water Code, §5.128, relating to electronic reporting; and CROMERR, the federal program for electronic reporting, 40 Code of Federal Regulations Parts 3, 9, 51, 60, 70, 71, 124, 142, 145, 162, 233, 257, 258, 271, 281, 403, 501, 745, and 763.

§19.10. Use of Electronic Document Receiving System.

(a) When the executive director has announced on the commission's public Web site that it is accepting specified electronic documents, individuals who submit to the commission electronic documents to satisfy requirements of authorized programs or designated state programs must use the commission's electronic document receiving system.

(b) Individuals desiring to use an electronic signature device must execute an electronic signature agreement with handwritten wet ink signature or by using an electronic identity verification system utilized by the commission.

(c) Authorized signatories may not allow another individual to use the electronic signature device unique to his or her signature.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 9, 2007.

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 811. CHOICES

The Texas Workforce Commission (Commission) adopts the following new sections, *without* changes, to Chapter 811, relating to Choices, as published in the November 24, 2006, issue of the *Texas Register* (31 TexReg 9576):

Subchapter C, Choices Services, §§811.29 - 811.34

The Commission adopts amendments, *without* changes, to the following sections of Chapter 811, relating to Choices, as published in the November 24, 2006, issue of the *Texas Register* (31 TexReg 9576):

Subchapter A, General Provisions, §§811.1 - 811.3

Subchapter B, Choices Services Responsibilities, §§811.11 - 811.16

Subchapter C, Choices Services, §§811.21, 811.23 - 811.26, 811.28

Subchapter D, Choices Work Activities, §§811.42 - 811.45, 811.47, 811.48, 811.50 and 811.51

Subchapter E, Support Services and Other Initiatives, §§811.65 - 811.67

The Commission adopts amendments, *with* changes, to the following section of Chapter 811, relating to Choices, as published in the November 24, 2006, issue of the *Texas Register* (31 TexReg 9576)

Subchapter C, Choices Services, §811.22 and §811.27

Subchapter D, Choices Work Activities, §§811.41, 811.46, and 811.49

Subchapter E, Support Services and Other Initiatives, §811.61 and §811.62

The Texas Workforce Commission (Commission) adopts the repeal of the following sections of Chapter 811, relating to Choices, as published in the November 24, 2006, issue of the *Texas Register* (31 TexReg 9576):

Subchapter C, Choices Services, §§811.29 - 811.32

Subchapter D, Choices Work Activities, §811.52

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of this amendment is to implement the regulatory requirements issued by the United States Health and Human Services Department (DHHS). The interim final regulations (interim regulations) issued by DHHS contain new provisions related to Temporary Assistance for Needy Families (TANF) work activities. In addition, technical changes are needed for clarification and consistency throughout Chapter 811.

In February 2006, the Deficit Reduction Act (DRA) of 2005 reauthorized the TANF program. In addition to providing ongoing funding for TANF, DRA also changes several provisions in law related to TANF work participation. DRA directed DHHS to issue regulations regarding:

--allowable work activities;

--verification, documentation, and internal control procedures; and

--inclusion of certain child-only cases in the calculation of work participation rates.

On June 29, 2006, DHHS issued its interim regulations (*Federal Register*, Volume 71, Number 125), which provide definitions for each allowable work activity including additional provisions for supervision, verification, and documentation for each allowable work activity.

The interim regulations also introduce a new term--*work-eligible individuals*--defined as parents who are included in the calculation of work participation rates. The new definition adds certain child-only cases to the calculation of federal work participation rates. Modification of current definitions and addition of new definitions to identify individuals eligible for or participating in Choices services are proposed to simplify and clarify the Choices service delivery for the Local Workforce Development Boards (Boards).

The interim regulations became effective on October 1, 2006, and Boards were informed of the major changes affecting Choices services prior to proposed amendments to Chapter 811. Boards have been advised to provide Choices services within the parameters of the interim regulations when provisions of Chapter 811 are not supported by the interim regulations. While there may be more stringent requirements under this chapter, the Commission's intent is to provide the Boards the same flexibility offered under the interim regulations.

In addition to the changes made to comply with the interim regulations and to align the rules with other current federal regulations, technical changes are made to:

--simplify and clarify rule language;

--update terminology and definitions;

--remove obsolete provisions; and

--update statutory citations.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts amendments to Subchapter A, as follows:

§811.2. Definitions.

Section 811.2(2), the definition of "TDHS - The Texas Department of Human Services," is removed. TDHS is now part of the Texas Health and Human Services Commission (HHSC) and is defined in §811.2(8). References to TDHS are changed throughout this chapter to reflect this name change.

Section 811.2(2) replaces the term "Choices individual" with "Choices eligible" to clarify which individuals are eligible to receive Choices services.

New §811.2(3) adds a definition for Choices participant. Section 811.2(3)(A) defines an "exempt Choices participant" as an adult or teen head of household who is not required under Texas Human Resources Code, Chapter 31 and HHSC rules (1 TAC, Chapter 372, Texas Works) to participate in Choices services, but may volunteer to participate. Section 811.2(3)(B) defines a "mandatory Choices participant" as an adult or teen head of household, including extended TANF recipients, conditional applicants, and sanctioned families, as defined in this section, who are required under HHSC rules to participate in Choices services. The intent of consolidating these definitions is to simplify language throughout the rules and to distinguish between those individuals who are eligible for Choices services--i.e., Choices eligibles--and those individuals who are participating in Choices services--i.e., Choices participants.

New §811.2(5) clarifies the definition of Earned Income Deduction (EID). Individuals who are working and receiving TANF cash assistance can receive the EID regardless of how many hours they work or how much they earn. Current language in Chapter 811 does not differentiate between individuals who receive the EID and are working fewer than 30 hours per week and individuals who are employed 30 hours per week or more. Specific exclusions or responsibilities listed throughout Chapter 811 for "EID individuals" are applicable only to those individuals coded by HHSC as working 30 hours per week, earning at least $700 per month, and receiving EID.

Section 811.2(6), the definition of mandatory individual, is removed. Section 811.2(3), the definition of Choices participant, includes mandatory individuals.

New §811.2(6) clarifies that the 60-month time limit for TANF cash assistance is federally imposed.

Section 811.2(10) removes references to exempt and mandatory recipients from the definition of "recipient." These references are now found in §811.2(3)(A) and §811.2(3)(B), relating to the definition of a Choices participant. The definition of recipient retains the prior references to an extended TANF recipient or former recipient formerly set forth in §811.2(8)(B) and §811.2(8)(C), which now are separate definitions set forth in §811.2(6) and §811.2(7).

Certain paragraphs in §811.2 have been renumbered to accommodate additions or deletions.

§811.3. Choices Services Strategy.

Section 811.3(c)(2)(D)(i) clarifies that Choices eligibles authorized to receive post-employment services include mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least $700 per month, and receiving the EID.

Section 811.3(c)(7)(B) adds the term "federal" to clarify that the 60-month TANF time limit for TANF cash assistance is federally imposed.

SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

The Commission adopts amendments to Subchapter B, as follows:

§811.11. Board Responsibilities.

Section 811.11(a)(2) specifies that applicants and conditional applicants have 10 days from the date of their eligibility interview to attend a Workforce Orientation for Applicants (WOA).

Section 811.11(a)(3)(A) specifies that applicants and conditional applicants are informed of employment services available while attending a WOA.

Section 811.11(c) replaces the term "recipient status" with the term "a Choices participant's eligibility" for better clarification.

Section 811.11(f) clarifies that Choices eligibles authorized to receive post-employment services include mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least $700 per month, and receiving the EID.

Section 811.11(g) adds the phrase "unless otherwise specified in this chapter," to specify that additional criteria for monitoring and tracking work requirements may be specified throughout the chapter.

Section 811.11(i) adds verification of participation hours in Choices as necessary data to be entered into The Workforce Information System of Texas (TWIST).

§811.13. Responsibilities of Choices Participants.

Section 811.13(b)(3) clarifies that Choices participants must report "actual" hours of participation as defined in §811.34. In addition, the term "component activities" is replaced with "Choices work activities" to provide consistent terminology throughout the chapter.

Section 811.13(c) and §811.13(d) replace the term "employment planning appointments" with the term "employment planning sessions" to provide consistent terminology throughout the chapter.

Section 811.13(e) states that mandatory Choices participants must be coded by HHSC as working at least 30 hours per week, earning at least $700 per month, and receiving the EID as related to their responsibility of reporting hours and receiving post-employment services.

§811.14. Noncooperation.

Section 811.14(a)(3) is reorganized as §811.14(b) to specify that for Choices participants who have not cooperated with work requirements and do not have good cause, a Board must ensure that a penalty is requested for mandatory Choices participants or a Board must terminate Choices services, including support services, for exempt Choices participants.

Section 811.14(d) clarifies that attempts to determine good cause for sanctioned families and conditional applicants must be made upon discovery of noncooperation during their demonstrated cooperation period.

Certain subsections in §811.14 have been renumbered to accommodate additions or deletions.

§811.15. Demonstrated Cooperation.

Section 811.15(a) replaces "one month" with "four consecutive weeks," relating to conditional applicants, to provide consistent terminology throughout the chapter.

§811.16. Good Cause for Choices Participants.

Section 811.16(b)(5) replaces the term "Responsibility Agreement" with "family employment plan" to provide consistent terminology throughout the chapter.

Section 811.16(c)(2) adds a new good cause reason for Choices participants who participate only to the extent determined able as supported by medical documentation but less than the required hours specified in this chapter.

Section 811.16(c)(4) replaces the term "household member" with the term "family member." The paragraph also specifies that a disabled family member does not attend school full time and Boards must ensure the need for care is supported by medical documentation.

Section 811.16(c)(5) adds a new good cause reason for those Choices participants who are caring for a disabled family member who attends school full time. The paragraph also stipulates that Boards must ensure the need for care is supported by medical documentation. Two separate good cause reasons are necessary to determine which Choices participants may be excluded from the calculation of federal work participation rates. Only those participants caring for a disabled family member who does not attend school full-time are disregarded in the calculation of federal work participation rates.

Section 811.16(c)(7)(B) - (C) remove the term "formal" to align the description of child care providers with the definition set forth in Chapter 809 of this title.

Section 811.16(c)(7)(D) replaces the term "formal or informal" with "appropriate" to align the good cause description with federal law.

Section 811.16(e)(4) is added to clarify that good cause and short-term excused absences are different types of determinations and must be established separately.

Certain paragraphs in §811.16 have been renumbered to accommodate additions or deletions.

SUBCHAPTER C. CHOICES SERVICES

The Commission adopts amendments to Subchapter C, as follows:

§811.21. General Provisions.

Sections 811.21(b)(1) - (3) are removed and relocated in new §811.29(a)(1) - (3) in order to list all provisions required by the Fair Labor Standards Act (FLSA) in one section.

§811.22. Assessment.

Section 811.22(b)(5) removes the phrase "or the need for parenting skills training" because HHSC requires Choices eligibles to attend a parenting skills class as part of their eligibility for TANF cash assistance.

Section 811.22(e)(1)(B) specifies that mandatory Choices participants must be coded by HHSC as employed to be excluded from the literacy assessment. Additionally, the requirement to provide literacy information to HHSC is removed because it is contained in §811.22(e)(2).

§811.23. Family Employment Plan.

Section 811.23(d)(3)(C) is modified to include substance abuse and mental health treatment as types of referrals for support services, as provided in the interim regulations.

Section 811.23(d)(4) is modified to state that individuals coded by HHSC as working at least 30 hours per week, earning at least $700 per month, and receiving the EID are not required to sign the family employment plan.

Section 811.23(e), which instructs Boards to enroll mandatory individuals in specific job readiness activities, is removed. The job readiness activities referenced in this subsection are no longer allowable work activities as defined in the interim regulations.

Certain subsections in §811.23 have been relettered to accommodate additions or deletions.

§811.24. Family Work Requirement Form for Two-Parent Families.

Section 811.24(2)(B) is modified to clarify that mandatory Choices participants must be coded by HHSC as employed 30 hours per week, earning at least $700 per month, and receiving the EID to be excluded from signing the Family Work Requirement.

§811.25. TANF Core and TANF Non-Core Activities.

Sections 811.25(a)(1)(A) - (H) are reordered to mirror the order of the activities in the interim regulations.

Section 811.25(a)(2)(C) is removed because parenting skills training is not an allowable federal work activity as specified in the interim regulations.

Section 811.25(d)(1) - (2), the work participation exceptions for two-parent families, are removed because these exclusions are not allowable in the calculation of federal work participation rates. Two-parent families receiving Commission-funded child care must participate in Choices activities an average of fifty-five hours per week regardless of good cause status.

§811.26. Special Provisions Regarding Community Service.

Section 811.26(a)(2) is removed and relocated in §811.29(b) in order to list all provisions required by FLSA in one section.

Certain subsections in §811.26 have been relettered to accommodate additions or deletions.

§811.27. Special Provisions Regarding Job Search and Job Readiness.

Section 811.27(b) removes the reference to job readiness activities in §811.41(d)(3)(A)(D) relating to activities associated with the health, safety, and welfare of families because these activities are no longer allowable under the interim regulations.

Section 811.27(d), which requires Boards to ensure Choices participants are continuously enrolled in specific job readiness activities listed in §811.41(d)(3), is removed. These job readiness activities related to the health, safety, and welfare of families are no longer allowable under the interim regulations.

Certain subsections in §811.27 have been relettered to accommodate additions or deletions.

§811.29. Special Provisions Regarding the Fair Labor Standards Act.

New §811.29(a) is added in order to list all provisions required by FLSA in one section. These provisions are relocated, with minor modifications, from removed §811.21(b)(1) - (3).

New §811.29(b) is added in order to list all provisions for FLSA-covered activities in one section. These provisions are relocated, with minor modifications, from removed §811.26(a)(2). In addition, new language is added stating that if a Choices participant's hours of community service or other unpaid work activity do not meet the core work activity requirement in §811.25(b) - (d), Boards must:

(1) enroll the Choices participant in additional core activities; or

(2) deem the remaining core hours as having met the core work activity requirement.

The Commission adds new §811.29(b)(2) to give Boards the option to deem core participation hours for Choices participants who cannot participate for their full core work activity hours in FLSA-covered activities. For example, a two-parent family with one child receives a maximum TANF benefit of $250 per month and a maximum Food Stamp benefit of $399 per month. The total TANF and Food Stamp benefits divided by the minimum wage allows the family to participate only 29 hours per week in FLSA-covered activities.

Two-parent families have a 30-hour per week core activity requirement if they do not receive subsidized child care; the requirement increases to 50 hours per week if they do receive subsidized child care. Under the current calculation of Choices participation, the two-parent family, if not receiving subsidized child care, must participate in an additional hour of core activities and five hours of non-core work activities to be counted as meeting the work participation requirement. If the two-parent family receives subsidized child care, the family must participate an additional 21 hours in core activities and five hours in non-core activities to be counted as meeting the work participation requirement.

Under the new deeming option, this two-parent family will count as meeting its core work participation requirement-with or without receiving subsidized child care--by participating the maximum of 29 hours allowed by FLSA requirements and participating 5 hours in non-core activities.

The deeming provision is allowed by the interim regulations as long as a state operates a mini-Simplified Food Stamp Program (mini-SFSP). Under the mini-SFSP, states must notify the Food and Nutrition Service (FNS) only of their *intent* to combine Food

Stamp and TANF benefits when calculating participation hours for FLSA-covered activities. In previous guidance issued by the U.S. Department of Labor, states were given the option of combining Food Stamp and TANF benefits in the calculation of FLSA-covered work activities. Because this option always has been available in the Choices rules, the Commission submitted a letter to FNS requesting recognition as a state that operates a mini-SFSP in order to employ the deeming provision. FNS recently approved the Commission's request.

§811.30. Special Provisions for Teen Heads of Household.

New §811.30 sets out the provisions, with minor modifications, previously located in repealed §811.29.

§811.31. Special Provisions for Choices Participants in Single-Parent Families with Children under Age Six

New §811.31 sets out the provisions, with minor modifications, previously located in repealed §811.30.

§811.32. Special Provisions Regarding Exempt Choices Participants and Choices Participants with Reduced Work Requirements

New §811.32(a) and §811.32(b)(1) set out the provisions, with minor modifications, previously located in repealed §811.31(a) and §811.31(b).

New §811.32(b)(2) provides that Boards should not request a penalty for Choices participants with disabilities who participate to the extent determined able, as supported by medical documentation, but less than the required hours specified in the chapter.

New §811.32(b)(3) provides that Boards should not request a penalty for Choices participants caring for a disabled family member, as supported by medical documentation when the Choices participant participates to the extent able but less than the required hours specified in the chapter.

§811.33. Other Special Provisions.

New §811.33 sets out the provisions, without modifications, previously located in repealed §811.32(b) - (c). The provisions previously located in repealed §811.32(a), regarding counting participation hours for mandatory participants with disabilities or mandatory participants caring for a disabled family member, are no longer included in this chapter because this method of calculating work participation hours is not consistent with the federal calculation of work participation hours. Section 811.16 and new §811.32 provide good cause provisions and penalty exceptions for Choices participants with reduced work requirements.

§811.34. Participation Provisions.

New §811.34 is added to provide guidance on counting actual participation hours for all work activities, along with the exceptions to this provision, as required by the interim regulations.

New §811.34(1) provides that Boards may count holidays or other paid leave as actual participation hours for paid work activities.

New §811.34(2) provides that Boards may count short-term excused absences as actual participation hours for unpaid work activities.

New §811.34(2)(A) states that the short-term excused absence must be because of a holiday, or total a maximum of 10 additional days within a 12-month period and not exceed two excused absences per month.

New §811.34(2)(B) provides that the Choices participant must have been scheduled to participate in an unpaid work activity during the time period in which the holiday or excused absence falls. In addition, Boards must ensure credited participation hours do not exceed the number of hours the Choices participant was scheduled to participate.

New §811.34(3) states that Boards may project participation hours in paid work activities based on an average of four weeks of current, documented actual hours.

New §811.34(3)(A) provides that a Board may project participation hours in self-employment for up to six months using an average of three months of current, documented actual hours.

New §811.34(3)(B) states that a Board may not count more hours toward the work participation rate for self-employed Choices participants than the number derived by dividing the Choices participant's net self-employment income (gross self-employment wages minus business expenses) by the federal minimum wage.

SUBCHAPTER D. CHOICES WORK ACTIVITIES

The Commission adopts amendments to Subchapter D, as follows:

§811.41. Job Search and Job Readiness Assistance.

Section 811.41(b)(1)(C) replaces the term "client-directed" with the term "customer-directed"; replaces the word "significant" with the word "direct"; and removes the requirement for customers to engage in activities addressing the health, safety, and welfare of their families. These changes are made to align with the definition of allowable job readiness activities provided in the interim regulations.

Proposed §811.41(b)(1)(C)(i) - (ii) have been removed based on guidance received from the Administration for Children and Families (ACF). The two sections informed Boards about how to verify and count participation hours in customer-directed job search. The sections stated that daily contact with Choices participants must be maintained to document the contact, verify participation, and discuss the progress of the participant's job search, and also allowed each job contact made by the Choices participant while participating in customer-directed job search to count as two hours of participation. The hours of participation increased if it was documented and verified that the job contact took more than two hours because of travel time or other reasonable explanations.

ACF has clarified that daily supervision for job search and job readiness activities does not necessarily mean daily contact. In addition, ACF's guidance clarified that Boards must ensure that only actual time spent in any Choices activity will be counted as participation. Boards must not assign a standard set of hours to job search activities, such as two hours for each job contact. The Commission recommends that Boards modify their job search logs to specify time spent for each job search contact or activity.

Comment: One commenter stated daily contact and 100% verification of participation in customer-directed job search was excessive as required by §811.41(b)(1)(C)(i). The commenter stated that case managers would be focusing on documenting daily contact and verifying participation rather than on helping participants find employment. The commenter suggested using a job search log to list daily contacts and having weekly appointments between the case manager and Choices participant.

Response: The Commission appreciates the suggestions. Based on guidance from ACF, the Commission has removed

§811.41(b)(1)(C)(i). ACF clarified that daily supervision for job search and job readiness activities does not necessarily mean daily contact. However, Boards must ensure case managers are accessible daily for Choices participants to report their job search progress and receive any additional guidance during their job search. Furthermore, Boards are allowed to perform a random sampling of the job search log to validate contacts made during customer-directed job search. The use of job search logs without any validation is considered self-attestation, which is no longer acceptable. The Commission also encourages Boards to use other methods such as tracking contacts in WorkInTexas.com, e-mail confirmations, or other online job banks to verify job search participation.

Section 811.41(b)(4) is added to require daily supervision of job search and job readiness activities, as required by the interim regulations. As previously stated, Boards are not required to ensure that case managers have daily contact with each Choices participant enrolled in job search. However, Boards must ensure that case managers are accessible daily to allow Choices participants to report their job search progress or seek additional guidance.

Section 811.41(b)(5) is added to require daily documentation in TWIST of job search and job readiness activities. This section requires Boards to document daily participation hours, as opposed to weekly hours, in TWIST. For example, documentation for participation in job search may reflect eight hours for Monday, eight hours for Wednesday, and eight hours for Friday, instead of 24 hours of job search for the entire week. This requirement does not apply to the frequency of data entry. Boards retain the flexibility to determine how often data entry occurs, as long as it is within the parameters set forth in §811.21. Automation changes in TWIST will be made to accommodate this new requirement.

Section 811.41(b)(6) is added to include the allowance for counting substance abuse treatment, mental health treatment, or rehabilitation activities as allowable job readiness activities as provided by the interim regulations.

Section 811.41(c) is modified to define job search activities as acts of seeking and obtaining employment, as specified in the interim regulations.

Sections 811.41(c)(1), 811.41(c)(3), 811.41(c)(6), and 811.41(c)(7), specifying certain types of job search activities, are deleted. These activities do not meet the new definition of job search but do meet the new definition of job readiness. Therefore, these activities are moved to §811.41(d).

Section 811.41(c)(5), "applying or interviewing for job vacancies," and §811.41(c)(6), "making contacts with potential employers," are added as allowable activities related to job search, as provided in the interim regulations.

Sections 811.41(d)(3) - (9) are added to specify other options for job readiness activities such as substance abuse treatment, rehabilitation activities, and job search activities that meet the new definition of job readiness, as defined in the interim regulations.

Sections 811.41(d)(3)(A) - (D), specifying activities essential to the health, safety, and welfare of families as a job readiness activity, are removed. The interim regulations specifically prohibit these types of activities to be counted under any work category.

Certain paragraphs in §811.41 have been renumbered to accommodate additions or deletions.

§811.43. Subsidized Employment.

Section 811.43(d) is added to provide that subsidized placements must prepare customers for unsubsidized employment, as required by the interim regulations.

Section 811.43(e) is added to provide that subsidized placements must be made with employers that expect to offer unsubsidized employment to Choices participants after the placement has ended.

§811.44. On-the-Job Training.

Section 811.44(d) is added to require Boards to ensure that Choices participants enrolled in on-the-job training are supervised daily, as required by the interim regulations.

Section 811.44(e) is added to require Boards to ensure on-the-job training is documented in TWIST at least every two weeks.

§811.45. Work Experience.

Section 811.45(b) removes the requirement that work experience positions are offered only in the private for-profit sector. The interim regulations do not place this restriction on work experience and this change aligns the work experience definition in this chapter with the definition of work experience in the interim regulations.

Section 811.45(d)(3) specifies that supervision for work experience activities must be on a daily basis, as required by the interim regulations.

Section 811.45(f) is added to require that documentation for work experience activities be entered into TWIST as least every two weeks.

§811.46. Community Service.

Section 811.46(b) is modified to require that Boards must not allow Choices participants to arrange their own community service placements because the placements must meet more stringent criteria, as required by the interim regulations, to be counted as participation. Additionally, the subsection incorporates the definition of community service programs to align with the definition in the interim regulations. Community service programs are defined in the interim regulations as structured, supervised programs that provide a direct benefit to the community and improve the employability of the Choices participant.

Section 811.46(d) is added to specify examples of allowable placement sites for community service activities.

Section 811.46(e) is added to list examples of allowable fields for community service activities, as provided in the interim regulations.

Section 811.46(f) is added to require that Choices participants in community service programs must be supervised on a daily basis, as required by the interim regulations.

Section 811.46(g) is added to require that community service activities must be documented in TWIST at least every two weeks.

§811.47. Child Care Services to Choices Participants in Community Service.

Section 811.47(b) removes the reference that states providing child care is a core activity. This statement is duplicative because it is found in §811.47(a).

Section 811.47(b)(3), which gives Boards the flexibility to set local policies for determining participation hours in child care activities, is removed. The interim regulations emphasize the need for consistency in the calculation of participation hours. Therefore,

the Commission has provided additional guidance in §811.47(f) on calculating participation hours for this activity.

Section 811.47(c) is added to require that placement in a child care activity must aid the Choices participant in becoming self-sufficient.

Section 811.47(d) is added to require that Choices participants who provide child care services are supervised on a daily basis, as required by the interim regulations.

Section 811.47(e) is added to require that child care services provided by Choices participants are documented at least every two weeks.

Section 811.47(f) is added to require that Boards must count only actual hours of participation in child care activities as allowable work participation hours.

§811.48. Vocational Educational Training.

Section 811.48(b) removes the statement that services provided by the Texas Rehabilitation Commission (now the Department of Assistive and Rehabilitative Services (DARS)) may be counted as vocational education training. The interim regulations provide a more narrow definition of vocational education and what types of institutions may provide the training. Services provided by DARS are no longer allowable as vocational educational training under this definition. However, if DARS contracts out vocational educational training to an education or training organization, Boards have the flexibility to determine whether that activity meets the allowable definition for vocational educational training. In addition, other activities offered through DARS may meet the new definitions of the other allowable Choices activities. Boards are encouraged to coordinate with DARS to provide services for Choices participants with disabilities within the parameters of this chapter.

Sections 811.48(c)(1), 811.48(c)(2), and 811.48(c)(7) are added to incorporate the interim regulation's definition of vocational educational training. These sections specify that vocational educational training is directly related to a specific occupation, trade, or vocation and list the types of organizations that may provide vocational educational training.

Section 811.48(c)(3) clarifies that vocational educational training must relate to current or emerging occupations, as provided in the interim regulations.

Section 811.48(d), which relates to counting study or homework hours for vocational educational training, is modified to align with the interim regulations. The interim regulations allow only supervised study or homework hours to count as participation. The Commission removes the five hour per week limit on study or homework time. If study or homework time must be supervised, a limit on countable participation hours is not necessary because hours can be verified.

Section 811.48(d)(3) is modified to state that study or homework time must be directly monitored, supervised, and documented.

Section 811.48(d)(4) is removed because the requirement that a Choices participant is making good progress is no longer limited only to counting study or homework time. Under the interim regulations, a Choices participant's "good or satisfactory" progress must be verified in order to count as participation.

Section 811.48(e) is added to require that Boards must verify a Choices participant's good or satisfactory progress in vocational educational training, as determined by the educational institution.

Section 811.48(f) is added to require that Choices participants enrolled in vocational educational training are supervised on a daily basis, as required by the interim regulations.

Section 811.48(g) is added to require that vocational educational training is documented in TWIST at least every two weeks.

Certain paragraphs in §811.48 have been renumbered to accommodate additions or deletions.

§811.49. Job Skills Training.

Section 811.49(e)(1) removes Adult Basic Education (ABE) as job skills training. The interim regulations state that this type of activity is considered an educational service for Choices participants who have not completed secondary school or received a General Educational Development credential. This reclassification of ABE is reflected in §811.50(b)(2).

Section 811.49(e)(1) also is modified to broaden the specific references to "English as a Second Language (ESL)" as "language instruction" and "Workforce Adult Literacy services" as "literacy instruction." These changes are made to align with terminology contained in the interim regulations. However, ESL and Workforce Adult Literacy services are included under the meaning of the broader terms.

Section 811.49(f), relating to counting study or homework hours for job skills training, is modified by removing the five hour per week limit on study or homework time. The interim regulations allow only supervised study or homework hours to count as participation. If study or homework time must be supervised, a limit on countable participation hours is not necessary because hours can be verified.

Section 811.49(f)(3) is modified to clarify that study or homework time must be directly monitored, supervised, and documented.

Section 811.49(f)(4) is removed because the requirement that a Choices participant is making good progress is no longer limited only to counting study or homework time. Under the interim regulations, a Choices participant's "good or satisfactory" progress must be verified in order to count as participation.

Section 811.49(g) is added to require that Boards must verify a Choices participant's good or satisfactory progress in job skills training.

Section 811.49(h) is added to require that Choices participants enrolled in job skills training are supervised on a daily basis, as required by the interim regulations.

Section 811.49(i) is added to require that job skills training is documented in TWIST at least every two weeks.

Certain paragraphs in §811.49 have been renumbered to accommodate additions or deletions.

§811.50. Educational Services for Choices Participants Who Have Not Completed Secondary School or Received a General Educational Development Credential.

Section 811.50(b)(1) clarifies that Choices participants age twenty and older are to be enrolled in educational services only if it is required for the job position.

Section 811.50(b)(2) is modified to add ABE and ESL instruction as allowable educational services. The interim regulations

reclassified ABE from job skills training to an allowable educational service.

Section 811.50(b)(2) also is modified to broaden the specific references to "English as a Second Language (ESL)" as "language instruction" and "Workforce Adult Literacy services" as "literacy instruction." These changes are made to align with terminology contained in the interim regulations. However, ESL and Workforce Adult Literacy services are included under the meaning of these broader terms.

Section 811.50(c) is added to clarify that educational services must provide skills and knowledge directly related to specific occupations or work settings.

Section 811.50(d), which relates to counting study or homework hours for educational services, is modified by removing the five hour per week limit on study or homework time. The interim regulations only allow supervised study or homework hours to count as participation. If study or homework time must be supervised, a limit on countable participation hours is not necessary because hours can be verified.

Section 811.50(d)(3) clarifies that study or homework time must be directly monitored, supervised, and documented.

Section 811.50(e)(4) is removed because the requirement that a Choices participant is making good progress is no longer limited only to counting study or homework time. Under the interim regulations, a Choices participant's "good or satisfactory" progress must be verified in order to count as participation.

Section 811.50(e) is added to require that Boards must verify a Choices participant's good or satisfactory progress in educational services, as determined by the educational institution.

Section 811.50(f) is added to require that Choices participants enrolled in educational services be supervised on a daily basis, as required by the interim regulations.

Section 811.50(g) is added to require that educational services are documented in TWIST at least every two weeks.

Certain subsections in §811.50 have been relettered to accommodate additions or deletions.

§811.51. Post-Employment Services.

Section 811.51(a) clarifies who is eligible for post-employment services and adds conditional applicants to the list of individuals who are offered post-employment services. It is the Commission's intent to help employed Choices eligibles to retain employment and achieve self-sufficiency.

Section 811.51(e)(2) replaces the reference to "one month of demonstrated cooperation" with the more general term, "demonstrated cooperation period," because sanctioned families and conditional applicants have different time frames in which to demonstrate cooperation.

§811.52. Parenting Skills Training.

Section 811.52, which lists parenting skills training as a Choices work activity, is repealed. The interim regulations define work activities as those activities that are work or direct preparation for work. While parenting skills training is important for Choices participants, it is not an allowable work activity defined in the interim regulations. Recipients are required to attend parenting skills training as part of their eligibility for TANF cash assistance. Frequently, HHSC has agreements with the local Women, Infants and Children offices or other community organizations to provide parenting skills training.

SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

The Commission adopts amendments to Subchapter E, as follows:

§811.61. Support Services.

Section 811.61(d)(2) replaces the reference to "one month of demonstrated cooperation" with the more general term, "demonstrated cooperation period," because sanctioned families and conditional applicants have different time frames in which to demonstrate cooperation. Additionally, references to Chapter 809 of this title, related to Child Care Services, have been updated to reflect new citations.

§811.62. Child Care for Choices Eligibles.

Section 811.62 is updated to reflect new citations in Chapter 809 of this title, related to Child Care Services.

COMMENTS WERE RECEIVED FROM:

Gulf Coast Workforce Development Board

The Agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§811.1 - 811.3

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code, Chapters 31 and 34.

The adopted rules affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2007.

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Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
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Proposal publication date: November 24, 2006
For further information, please call: (512) 475-0829

SUBCHAPTER B. CHOICES SERVICES RESPONSIBILITIES

40 TAC §§811.11 - 811.16

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it

deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code, Chapters 31 and 34.

The adopted rules affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. CHOICES SERVICES

40 TAC §§811.21 - 811.34

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code, Chapters 31 and 34.

The adopted rules affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

§811.22. Assessment.

(a) A Board shall ensure that initial and ongoing assessments are performed to determine the employability and retention needs, including wage advancement and career development needs, of Choices participants as follows:

(1) An assessment is required for Choices participants who are:

(A) at least age 18; or

(B) heads of household, as determined by HHSC, who are not yet age 18, have not completed secondary school or received a GED credential, and are not attending secondary school.

(2) An assessment shall be provided to applicants who choose to participate in Choices services.

(3) Ongoing assessments shall be provided to former recipients who choose to participate in Choices services.

(b) Assessments shall include evaluations of strengths and potential barriers to obtaining and retaining employment, such as:

(1) skills and abilities, employment, and educational history in relation to employers' workforce needs in the local labor market;

(2) pre- and post-employment skills development needs to determine the necessity for job-specific training;

(3) unmet housing needs and whether those needs are a barrier to full participation in the workforce and progression to self-sufficiency;

(4) support services needs; and

(5) individual and family circumstances that may affect participation, including the existence of family violence, substance abuse, mental health, or disability-related issues, as one of the factors considered in evaluating employability.

(c) A Board shall ensure that the assessment identifies Choices eligibles with higher than average barriers to employment, as defined by the Board.

(d) A Board shall ensure that if the skills assessment indicates that a Choices participant requires job-specific training for placement in a job paying wages that equal or exceed the Board's identified self-sufficiency wage, the Board shall, to the extent funds are available and to the extent allowed under this chapter, place the Choices participant in vocational educational training activities or job skills training activities that are designed to improve employment and wage outcomes and job retention; and

(e) For mandatory Choices participants who are at least age 18, or who are heads of household but are not yet age 18 and have not completed secondary school or received a GED credential and are not attending secondary school:

(1) The assessments shall also include evaluations of the mandatory Choices participants':

(A) vocational and educational skills, experience, and needs; and

(B) literacy level by using a statewide standard literacy assessment instrument unless the Choices participants are mandatory Choices participants coded by HHSC as working at least 30 hours per week, earning at least $700 per month, and receiving the EID.

(2) A Board shall ensure that the grade-level results or other literacy information are provided to HHSC for use in determining the appropriateness of the initial state time-limit designation for TANF cash assistance as described in the Texas Human Resources Code §31.0065, relating to state time-limited benefits.

(f) Assessment Outcome. Assessments shall result in the development of a family employment plan, as described in §811.23.

§811.27. Special Provisions Regarding Job Search and Job Readiness.

(a) Choices participants in unsubsidized employment as defined in §811.42, who lose that employment, may participate in job search activities as defined in §811.41(c) and job readiness activities as defined in §811.41(d) unless they have reached the six-week limit per federal fiscal year.

(b) Job search and job readiness activities as defined in §811.41 are limited as follows:

(1) Choices participants may not be enrolled for more than four weeks of consecutive activity;

(2) Choices participants may not be enrolled for more than six weeks of total activity in a federal fiscal year;

(3) in order for Choices participants to qualify for their remaining two weeks of job search and job readiness, they must first comply with §811.26(a), which requires that Choices participants be engaged in an employment activity or in community service; and

(c) only once per federal fiscal year may a partial week count as a full week of participation, per Choices participant.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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40 TAC §§811.29 - 811.32

The repeals are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code, Chapters 31 and 34.

The adopted repeals affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER D. CHOICES WORK ACTIVITIES

40 TAC §§811.41 - 811.51

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code, Chapters 31 and 34.

The adopted rules affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

§811.41. Job Search and Job Readiness Assistance.

(a) Job search and job readiness are core activities as defined in §811.25(a)(1).

(b) A Board shall ensure that job search and job readiness activities:

(1) incorporate the following:

(A) individual and group activities;

(B) staff-assisted services in which Texas Workforce Center staff provide direction and guidance to Choices participants, including appropriate referrals based on their skills and abilities to pre-scheduled job interviews; and preparatory activities that are essential to obtaining and retaining employment; and

(C) customer-directed activities that do not require direct staff involvement, and include activities in which Choices participants independently identify employment opportunities based upon their employment strengths, and perform preparatory activities that are essential to obtaining and retaining employment.

(2) are limited to activities necessary for Choices participants to secure immediate employment.

(3) provide individual assistance or coordinated, planned, and supervised activities that prepare Choices participants for seeking employment.

(4) are supervised daily.

(5) are documented daily in TWIST.

(6) are allowable treatment or therapy activities that include substance abuse treatment, mental health treatment, or rehabilitation activities determined to be necessary to assist Choices participants with seeking, obtaining, or retaining employment. Boards shall ensure treatment and therapy activities are certified by a qualified medical or mental health professional.

(c) Job search activities are defined as acts of seeking and obtaining employment, including:

(1) job referrals;

(2) information on available jobs;

(3) occupational exploration, including information on local emerging and demand occupations;

(4) job fairs;

(5) applying or interviewing for job vacancies; and

(6) making contacts with potential employers.

(d) Job readiness activities are designed to assist Choices participants with addressing issues that will aid them in seeking, obtaining, and retaining employment, including:

(1) life skills;

(2) guidance and motivation for development of positive work behaviors necessary for the labor market;

(3) job skills assessment;

(4) substance abuse treatment;

(5) mental health treatment;

(6) rehabilitation activities;

(7) job counseling;

(8) interviewing skills and practice interviews; and

(9) assistance with applications and resumes.

(e) Job search and job readiness activities are time-limited as defined in §811.27.

§811.46. Community Service.

(a) Community service is a core activity as defined in §811.25(a)(1).

(b) A Board shall ensure that a determination is made, on a case-by-case basis, whether to authorize, arrange, or refer Choices participants to a community service program that provides employment or training activities to Choices participants through unsalaried, work-based positions in the public or private nonprofit sectors. A Board shall not allow Choices participants to arrange their own community service placements. A Board shall ensure community service programs contain structured, supervised activities that are a direct benefit to the community and are designed to improve the employability of Choices participants who have been unable to find employment.

(c) A Board shall ensure that all mandatory Choices participants subject to §811.26(a) are referred to a community service program.

(d) Community service positions may include, but are not limited to, work performed in:

(1) a school or Head Start program;

(2) a church;

(3) a government or nonprofit agency; or

(4) Americorps, VISTA, or other volunteer organizations.

(e) A Board shall ensure community service placements are limited to positions that serve a useful community purpose in fields such as health, social service, environmental protection, education, urban and rural redevelopment, welfare, recreation, public facilities, public safety, and child care.

(f) A Board shall ensure Choices participants in community service programs are supervised daily.

(g) A Board shall ensure community service activities are documented in TWIST at least every two weeks.

§811.49. Job Skills Training.

(a) Job skills training is a non-core activity as defined in §811.25(a)(2).

(b) Job skills training services are designed to increase a Choices participant's employability. Job skills training may also include activities ensuring that Choices participants become familiar with workplace expectations and exhibit work behavior and attitudes necessary to compete successfully in the labor market. Various types of activities, which are directly related to employment, may qualify, such as personal development and preemployment classes.

(c) A Board shall ensure that a determination is made on a case-by-case basis whether to authorize, arrange, or refer Choices participants for job skills training as set forth in the family employment plan.

(d) Job skills training shall be:

(1) directly related to employment; and

(2) consistent with employment goals identified in the family employment plan, when possible.

(e) Job skills training includes:

(1) language instruction or literacy instruction;

(2) entrepreneurial training provided prior to business start up; and

(3) self-employment assistance:

(A) for Choices participants currently engaged in operating a small business;

(B) for Choices participants based upon an objective assessment process that identifies Choices participants who are likely to succeed; and

(C) that may include microenterprise services such as:

(i) business counseling;

(ii) financial assistance; and

(iii) technical assistance.

(f) Boards may count supervised study or homework time toward a Choices participant's family participation requirement if:

(1) study or homework time is directly correlated to the demands of the course work for out-of-class preparation as described by the educational institution;

(2) the educational institution's policy requires a certain number of out-of-class preparation hours; and

(3) study or homework time is directly monitored, supervised, and documented.

(g) A Board shall verify whether the Choices participant is making good or satisfactory progress as determined by the job skills training provider.

(h) A Board shall ensure Choices participants enrolled in job skills training are supervised daily.

(i) A Board shall ensure job skills training is documented in TWIST at least every two weeks.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2007.

TRD-200700344
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Effective date: February 26, 2007
Proposal publication date: November 24, 2006
For further information, please call: (512) 475-0829

40 TAC §811.52

The repeal is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code, Chapters 31 and 34.

The adopted repeal affects Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 6, 2007.

TRD-200700343
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Effective date: February 26, 2007
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For further information, please call: (512) 475-0829

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SUBCHAPTER E. SUPPORT SERVICES AND OTHER INITIATIVES

40 TAC §§811.61, 811.62, 811.65 - 811.67

The rules are adopted under Texas Labor Code, §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities; and Texas Human Resources Code, Chapters 31 and 34.

The adopted rules affect Texas Labor Code, Title 4 and Texas Human Resources Code, Chapters 31 and 34.

§811.61. Support Services.

(a) A Board shall ensure that support services as specified in this subchapter are provided, if needed, to Choices participants to address barriers to employment or participation in Choices services, subject to availability of resources and funding. A Board shall ensure that support services provided to Choices participants are coordinated with the employer, when appropriate.

(b) A Board shall ensure that support services, including Commission-funded child care, are provided only to Choices participants who are meeting work requirements set forth in §§811.16, 811.23, and 811.25 - 811.34, and as set forth in §809.45 of this title. In applying this provision, a Board shall ensure support services are provided to Choices participants if it is determined support services are needed to comply with work requirements set forth in §§811.16, 811.23, and 811.25 - 811.34, and as set forth in §809.45 of this title.

(c) A Board shall ensure that:

(1) support services are terminated immediately upon a determination of failure to meet work requirements by Choices participants unless otherwise determined by the Board's service provider as referenced in subsection (b) of this section;

(2) the Board's child care contractor is notified immediately of the failure to meet work requirements; and

(3) upon notification, the Board's child care contractor immediately notifies the child care provider that services are terminating due to failure to meet work requirements.

(d) A Board shall ensure that support services, classified as cash assistance, for:

(1) applicants and former recipients do not extend beyond four months for those who are unemployed and not receiving TANF cash assistance; and

(2) unemployed conditional applicants and sanctioned families do not extend beyond their demonstrated cooperation period.

§811.62. Child Care for Choices Eligibles.

(a) A Board shall ensure that child care is provided if needed, as specified in Chapter 809 of this title.

(b) Transitional child care is provided as needed, as specified in §809.48 of this title.

(c) Choices child care is provided as needed, as specified in §809.45 of this title.

(d) TANF Applicant child care is provided as needed, as specified in §809.46 of this title.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 26, 2007.

TRD-200700345
Reagan Miller
Deputy Director for Workforce and UI Policy
Texas Workforce Commission
Effective date: February 26, 2007
Proposal publication date: November 24, 2006
For further information, please call: (512) 475-0829

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §45.2(a)

Multiple species diseases

Akabane - Akabane virus

Anthrax, **- Bacillus anthracis

Aujeszky's disease - Pseudorabies virus, herpesvirus suis

Leishmaniasis** - Leishmania infantum and L donavani

Foot and mouth disease - Aphthovirus, types A,O,C, SAT, Asia

Heartwater - Cowdria ruminantium

African Trypanosomosis (Nagana) - Trypanosoma brucei, T. vivax,

T. brucei

Rinderpest - Morbillivirus

Rift Valley fever - Bunya virus

Vesicular stomatitis - Rhabdovirus; 2 serotypes; New Jersey and Indiana

Screwworm - Cochliomyia hominivorax

Cattle diseases (including Exotic Bovidae)

Bovine babesiosis - *B. bovis, B. divergens*, Babesia microti

Bovine brucellosis - Brucella abortus

Bovine ephemeral fever - Rhabdovirus

Bovine tuberculosis - Mycobacterium bovis

East coast fever (Theileriosis) - Theileria parva

Malignant catarrhal fever (wildebeest associated) - Alcelaphine

herpesvirus (AHV 1)

Contagious bovine pleuropneumonia - Mycoplasma mycoides

Lumpy skin disease - Neethling poxvirus

Bovine spongiform encephalopathy -

Scabies * - Sarcoptes scabiei, Psoroptes bovis, Chorioptes bovis

Cervidae

Brucellosis - Brucella abortus, Brucella suis (biotype 4)

Chronic Wasting Disease -

Tuberculosis - Mycobacterium bovis

Sheep and goat diseases

Caprine and ovine brucellosis (not B. ovis infection) – Brucella melitensis

Contagious caprine pleuropneumonia - Mycoplasma capri (biotype 78)

Louping ill - Flavovirus

Nairobi sheep disease - Bunyaviridae

Peste des petits ruminants - Morbillivirus, Paramyxoviridae family

Sheep pox and goat pox - Capripoxvirus

Scrapie -

Scabies * - Sarcoptes scabiei

Equine diseases

African horse sickness - Orbivirus

Contagious equine metritis - Tayorella equigenitalis

Dourine - Trypanosoma equiperdum

Epizootic lymphangitis - Histoplasma farciminosum

Equine encephalomyelitis (Eastern and Western) *, ** - Alphavirus

Equine infectious anemia * - Lentivirus

Equine morbillivirus pneumonia - Morbillivirus

Equine piroplasmosis - Babesia equi, B. caballi

Glanders - Pseudomonas mallei

Japanese encephalitis - Flavovirus

Surra - Trypanosoma evansi

Venezuelan equine encephalomyelitis** - Alphavirus; Togaviridae family

Equine Viral Arteritis (EVA)*

Equine Herpes Virus-1 (EHV-1)*

Swine diseases

African swine fever - Poxvirus

Classical swine fever (hog cholera) - Togovirus

Pseudorabies - Herpesvirus suis

Porcine brucellosis - Brucella suis

Swine vesicular disease - Picornavirus

Vesicular Exanthema - Calicivirus

Poultry diseases

Avian influenza - Orthomyxoviruse

Avian infectious laryngotracheitis * - Orthomyxovirus, herpesvirus

Avian tuberculosis - Mycobacterium avium serovars 1,2

Duck virus hepatitis - Picornavirus

Duck virus enteritis - Herpesvirus

Fowl typhoid - Salmonella gallinarum

Highly pathogenic avian influenza (fowl plague) – Orthomyxovirus (type H5 or H7)

Infectious encephalomyelitis - Arbovirus

Ornithosis (psitticosis) - Chlamydia psittaci

Pullorum disease - Salmonella pullorum

Newcastle disease (VVND) - Paramyxovirus-1 (PMV-1)

Paramyxovirus infections (other than Newcastle disease) - PMV-2 to PMV-9

Rabbit diseases

Myxomatosis - Myxomatosis virus

Viral haemorrhagic disease of rabbits - Calciviral disease

* These diseases will only be reportable through the last day of the 80th Texas legislative session unless continued in effect by act of the legislature.

** These diseases are also reportable to the Department of State Health Services.

Figure: 30 TAC §101.306(b)(3)

Calculation of Emission Reductions Needed for System Cap or Source Cap

$$ECS = \left[\sum_{i=1}^{N}(H_n \times R_n) - \sum_{i=1}^{N}(H_i \times R_i)\right] \times \frac{365}{2000}$$

Where:

N = the total number of emission units in the source cap

i = each emission unit in the source cap

H_i = actual daily heat input, in million British thermal units (MMBtu) per day, as calculated according to §§117.123(b)(1), 117.223(b)(1), 117.320(c)(1), 117.323(b)(1), 117.423(b)(1), 117.1020(c)(1), 117.1120(c)(1), or 117.1220(c)(1) of this title

R_i = the facility's emission factor, in pounds (lb)/MMBtu, is defined as in §§117.123(b)(1), 117.223(b)(1), 117.320(c)(1), 117.323(b)(1), 117.423(b)(1), 117.1020(c)(1), 117.1120(c)(1), or 117.1220(c)(1) of this title

H_n = the maximum daily heat input, in MMBtu per day, expected for an emission unit during the use period

R_n = the maximum emission factor, in lb/MMBtu, expected for an emission unit during the use period

Figure: 30 TAC §101.353(a)

$$A = [B] - X\left[B - \left(\frac{LA_{HA} * EF_{FINAL}}{2000}\right)\right]$$

Where:

(1) A= number of allowances rounded to tenths of tons;

(2) B = the facility's baseline emission rate and is calculated as follows:

(A) For facilities in operation prior to January 1, 1997:

$$B = \frac{(LA_{97} * EF_{97}) + (LA_{98} * EF_{98}) + (LA_{99} * EF_{99})}{3(2000)}$$

Where:

LA97 = the facility's level of activity, as certified by the executive director for 1997;

LA98 = the facility's level of activity, as certified by the executive director for 1998;

LA99 = the facility's level of activity, as certified by the executive director for 1999;

EF97 = the facility's emission factor for 1997 or the emission specifications under §§117.310, 117.1210, and 117.2010 of this title (relating to Emission Specifications for Attainment Demonstration; and Emission Specifications) (ESAD) whichever is higher, in pounds per unit of activity, (not to exceed any applicable federal or state regulation, rule, or permit limit), as certified by the executive director;

EF98 = the facility's emission factor for 1998 or the emission specifications under ESAD, whichever is higher, in pounds per unit of activity, (not to exceed any applicable federal or state regulation, rule, or permit limit), as certified by the executive director;

EF99 = the facility's emission factor for 1999 or the emission specifications under ESAD, whichever is higher, in pounds per unit of activity, (not to exceed any applicable federal or state regulation, rule, or permit limit), as certified by the executive director.

(B) For existing facilities not in operation prior to January 1, 1997 and that have been in operation less than five complete consecutive calendar years beginning after the end of the adjustment period and have not established two years of baseline data:

$$B = \frac{LA_{ALLOWABLE} * EF_{ALLOWABLE}}{2000}$$

Where:

LAAllowable = The level of activity authorized by the executive director until such time two consecutive calendar years of actual level of activity data is available;

EFAllowable = The emission factor or the emission specifications under ESAD, whichever is higher, authorized by the executive director until such time two consecutive calendar years of actual emission data is available.

(C) For existing facilities not in operation prior to January 1, 1997, and that have established two consecutive calendar years of baseline data out of the first five years of operation following the end of the adjustment period:

$$B = \frac{(LA_{YEAR-1} * EF_{YEAR-1}) + (LA_{YEAR-2} * EF_{YEAR-2})}{2(2000)}$$

Where:

LAYear-1 = the facility's level of activity, as certified by the executive director, for the first of any two consecutive years within the first five years of operation;

LAYear-2 = the facility's level of activity, as certified by the executive director, for the second of any two consecutive years within the first five years of operation;

EFYear-1 = the facility's emission factor or the emission specifications under ESAD, whichever is higher, in pounds per unit of activity, (not to exceed any applicable federal or state regulation, rule, or permit limit), as certified by the executive director, for the first of any two consecutive years within the first five years of operation;

EFYear-2 = the facility's emission factor or the emission specifications under ESAD, whichever is higher, in pounds per unit of activity, (not to exceed any applicable federal or state regulation, rule, or permit limit), as certified by the executive director, for the second of any two consecutive years within the first five years of operation.

(3) X = reduction factor, where:

(A) For all boilers, auxiliary steam boilers, and stationary gas turbines (including duct burners used in turbine exhaust ducts) within an electric power generating system, as defined in §117.10(14)(A) of this title (relating to Definitions), located in the Houston-Galveston-Brazoria nonattainment area:

(i) for January 1, 2002 through March 31, 2003, X = 0.00;

(ii) for April 1, 2003 through March 31, 2004, X = 0.50;

(iii) on or after April 1, 2004, X = 1.00;

(B) For facilities subject to the emission specifications under §117.310(a)(1)(A) and (B), (2)(A), (5), (8)(A)(i), (8)(B), (9)(A)(ii), (10), or (11) of this title:

(i) for January 1, 2002 through March 31, 2004, X = 0.00;

(ii) for April 1, 2004 through March 31, 2005, X = 0.47;

(iii) for April 1, 2005 through March 31, 2006, X = 0.80;

(iv) for April 1, 2006 through March 31, 2007, X = 0.93;

(v) on and after April 1, 2007, X = 1.00;

(C) For all other facilities:

(i) for January 1, 2002 through March 31, 2004, X = 0.00;

(ii) for April 1, 2004 through March 31, 2005, X = 0.389;

(iii) for April 1, 2005 through March 31, 2006, X = 0.667;

(iv) for April 1, 2006 through March 31, 2007, X = 0.778;

(v) on and after April 1, 2007, X = 1.00;

(D) Alternatively, facilities subject to the reduction factors under subparagraph B of this paragraph may elect to comply with the following:

(i) for January 1, 2002 through March 31, 2005, X=0.00;

(ii) on and after April 1, 2005, X=1.00.

(E) Election to comply with the alternative reduction schedule under subparagraph (D) of this paragraph shall be made by letter to the executive director no later than April 1, 2003.

(F) For calendar years which include two different reduction factors, the reduction factor shall be adjusted using the appropriate ratio to reflect the number of months covered by each reduction factor.

(4) LAHA = historical average level of activity, where:

(A) For facilities in operation on or before January 1, 1997, the average level of activity, as certified by the executive director, for 1997, 1998, and 1999; or

(B) For existing facilities which began operation after January 1, 1997, LAHA is:

(i) the level of activity authorized by the executive director until such time two consecutive calendar years of actual level of activity data is available, beginning after the end of the adjustment period; or

(ii) when two complete consecutive calendar years of actual level of activity data is available, beginning after the end of the adjustment period, the level of activity becomes the average of the facility's actual level of activity over those two consecutive calendar years of actual level of activity data.

(5) EFfinal = emission factor, as listed in §§117.310, 117.1210, or 117.2010 of this title.

(6) For facilities using alternative emission specifications as allowed in §117.310(a)(17) or §117.2010(c)(6) of this title, the level of activity for any formula will be the lowest of the level of activity as calculated in variables (2)(A), (2)(B), or the level of activity limited by an enforceable limit or commitment necessary to qualify for an alternative emission specification in §117.310(a)(17) or §117.2010(c)(6) of this title.

Figure: 30 TAC §101.376(d)(2)(A)(i)

$$\text{Amount of DERCs Required (tons)} = \sum_{i=1}^{N} \left[\left(EH_i \times ER_i \right) - \left(H_i \times R_i \right) \right] \times \left(\frac{d}{2000} \right)$$

Where:

d = the number of days in the use period

i = each emission unit in the source or system cap

N = the total number of emission units in the source or system cap

H_i = actual daily heat input, in million British thermal units (MMBtu) per day, as calculated according to §§117.123(b)(1), 117.223(b)(1), 117.320(c)(1) and (2), 117.323(b)(1), 117.423(b)(1), 117.1020(c)(1), 117.1120(c)(1), 117.1220(c)(1), or 117.3020(c) of this title (relating to Source Cap; and System Cap) as applicable

R_i = actual emission rate, in pounds (lb)/MMBtu, as defined in §§117.123(b)(1), 117.223(b)(1), 117.320(c)(1) and (2), 117.323(b)(1), 117.423(b)(1), 117.1020(c)(1), 117.1120(c)(1), 117.1220(c)(1), or 117.3020(c) of this title as applicable

EH_i = expected new daily heat input, in MMBtu per day

ER_i = expected new emission rate, in lb/MMBtu.

Figure: 30 TAC §101.376(d)(2)(A)(ii)

$$\text{Amount of DERCS Required (tons)} = \sum_{i=1}^{N}\left[\left(EH_{Mi}xER_i\right)-\left(H_{Mi}xR_i\right)\right]\frac{1}{2000}$$

Where:

i = each emission unit in the source or system cap

N = the total number of emission units in the source or system cap

R_i = in lb/MMBtu, is defined as in §§117.123(b)(1), 117.223(b)(1), 117.320(c)(3), 117.323(b)(1), 117.423(b)(1), 117.1020(c)(2), 117.1120(c)(2), or 117.1220(c)(2) of this title (relating to Source Cap; Emission Specifications for Attainment Demonstration; and System Cap) as applicable

H_{Mi} = the maximum daily heat input, in MMBtu/day, as defined in §§117.123(b)(1), 117.223(b)(1), 117.320(c)(3), 117.323(b)(1), 117.423(b)(1), 117.1020(c)(2), 117.1120(c)(2), or 117.1220(c)(2) of this title as applicable

EH_{Mi} = expected new maximum daily heat input, in MMBtu per day

ERi = expected new emission rate, in lb/MMBtu.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Notice of Waiver of Late Fees

Texas Administrative Code, Title 4, Part 1, Chapter 1, §1.56(c)(2)(B)(vi) provides that the Texas Department of Agriculture (TDA) may, by written notice published in the In Addition section of the *Texas Register* waive late fees for a class of licensees if, due to malfunctions in the renewal generation process, a class of license renewals are mailed less than 30 days prior to the normal expiration date for that class of licensees. In accordance with §1.56(c)(2)(B)(vi), TDA hereby provides notice that it is waiving late fees for its Nursery Floral and Pesticide Applicator accounts whose renewal notices were mailed less than 30 days prior to the expiration date due to a data transmission error that occurred during the printing of the 2007 renewal notices. This late fee waiver is effective beginning February 28, 2007, and will be valid for the affected accounts until March 31, 2007. Please contact Timothy Speer at (877) 542-2474 if you have any questions regarding this notice.

TRD-200700484
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: February 14, 2007

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Department of Assistive and Rehabilitative Services

Correction of Error

The Department of Assistive and Rehabilitative Services (DARS) published a notice concerning Application for Federal Funds for Early Childhood Intervention in the February 9, 2007, issue of the *Texas Register* (32 TexReg 565).

DARS inadvertently listed the title of the document as "Notice of Public Hearing for DARS Annual Application for Federal Funds for Early Childhood Intervention".

The correct title is "Notice of Request for Comments on DARS Annual Application for Federal Funds for Early Childhood Intervention, to be submitted on April 20, 2007".

DARS is republishing the corrected notice in this issue of the *Texas Register*.

TRD-200700443

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Notice of Request for Comments on DARS Annual Application for Federal Funds for Early Childhood Intervention, to be submitted on April 20, 2007

The Department of Assistive and Rehabilitative Services, Division for Early Childhood Intervention, is soliciting comments related to its annual application for federal funds for early childhood intervention. DARS will be requesting funding under the Individuals with Disabilities Education Act, Part C for federal fiscal year 2007. The funding application will be submitted to the U.S. Department of Education, Office of Special Education Programs on April 20, 2007. To request copies of annual funding application or to make comments concerning early childhood intervention contact:

Kim Wedel

Assistant Commissioner

Early Childhood Intervention

Department of Assistive & Rehabilitative Services

4900 North Lamar Blvd., Mail Code 3029

Austin, Texas 78751-2399

(512) 424-6753

TRD-200700436
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Department of Assistive and Rehabilitative Services
Filed: February 13, 2007

♦ ♦ ♦

Office of the Attorney General

Notice of Settlement of Texas Water Code Enforcement Action

The State of Texas hereby gives notice of the proposed resolution of a suit brought by the Texas Commission on Environmental Quality for soil and groundwater contamination caused by the discharge of tetrachloroethylene. The claims were brought in part pursuant to the Texas Water Code. Before the State may settle a judicial enforcement action, pursuant to §7.110 of the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment to be entered by the United States Bankruptcy Court. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Law.

Case Title and Court: Harris County Texas v. Henry T.T. Lucky, Inc., Choon Hae Kim dba Bell Dry Cleaners, and the estate of Dae Kim, No. 2003-03457, 152nd Judicial District, Harris County, Texas, to be settled in In re Choon Hae Kim, Case No. 05-81566, United States Bankruptcy Court for the Southern District of Texas, Galveston Division.

Nature of Suit: This is a suit for civil penalties and injunctive relief related to groundwater and soil contamination in the vicinity of Bell Dry Cleaners located at 11600 Jones Road, Harris County, Texas.

Proposed Settlement: The proposed settlement provides for injunctive relief and a global resolution in the bankruptcy case of the TCEQ's claims against Choon Hae Kim in both the state court case (Harris County Texas v. Henry T.T. Lucky, Inc., Choon Hae Kim dba Bell Dry Cleaners, and the estate of Dae Kim, No. 2003-03457, 152nd Judicial District, Harris County, Texas) and the bankruptcy case (In re Choon Hae Kim, Case No. 05-81566, United States Bankruptcy Court for the Southern District of Texas, Galveston Division). The

proposed settlement liquidates the TCEQ's claims for civil fines and penalties against Choon Hae Kim and provides that the TCEQ and Harris County, jointly and severally, have an allowed two million dollar ($2,000,000.00) non-dischargeable Bankruptcy Court judgment for civil files and penalties against Choon Hae Kim under applicable bankruptcy laws. The proposed settlement further provides that after the Bankruptcy Court has approved the proposed settlement and entered its judgment, TCEQ and Harris County will non-suit Choon Hae Kim, with prejudice, in the state court case.

The Office of the Attorney General will accept written comments relating to this proposed judgment for thirty (30) days from the date of the publication of this notice. Copies of the proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 8th Floor, Austin, Texas. A copy of the proposed judgment may also be obtained in person or by mail at the above address for the cost of copying. Requests for copies of the settlement and written comments on the proposed judgment should be directed to Ashley Flynn Bartram, Assistant Attorney General, Bankruptcy & Collections Division, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2173, facsimile (512) 482-8341.

For information regarding this publication, contact Lauri Saathoff, Agency Liaison, at (512) 463-2096.

TRD-200700479
Stacey Napier
Deputy Attorney General
Office of the Attorney General
Filed: February 14, 2007

♦ ♦ ♦

Texas Building and Procurement Commission

List of States with Resident Bidder Preferences

Pursuant to Government Code, §2252.003(a), the Texas Building and Procurement Commission (Commission) is required to annually publish in the *Texas Register* a list of the states that regulate the award of a governmental contract to nonresident bidders. The list must include a citation and summary of each state's law or regulation concerning the evaluation of bids from and award of contracts to nonresident bidders.

In addition, the Texas Building and Procurement Commission publishes the list and information concerning Reciprocity on its web site at the following address:

http://www.tbpc.state.tx.us/communities/procurement/res

The following list meets the statutory requirement to publish under §2252.003(a) and is a valuable resource. However, the Commission stresses that statutes should be construed in their entirety. Before relying on any section for evaluation of a bid, the Commission recommends obtaining and reviewing the relevant law or regulation in its entirety.

For information concerning this list or updates to the list, contact the Commission's Legal Services Division at (512) 463-4257.

ALABAMA

ALABAMA RESIDENT BIDDER PREFERENCE

Certain State Agencies: Preference to be given to Alabama commodities, firms, etc., Ala. Code §41-16-57. In the purchase of or contract for personal property or contractual services preference shall be given to Alabama persons, firms, or corporations provided there is no sacrifice or loss in price or quality. Public Works contracts are specifically excluded as they are governed exclusively by Title 39 of the Code of Alabama. See reciprocal preference below.

Generally: Manner of awarding contracts generally; records; exemptions, Ala. Code §41-16-27. Preference for Alabama persons, firms, or corporations for purchase or contract for personal property or contractual services. Alabama business entity to have preference in contractual services and purchases of personal property regarding certain services negotiated on behalf of two-year and four-year colleges and universities.

Highways: Purchase of motor fuels, oils, greases and lubricants, Ala. Code §23-1-51. All motor fuels, oils, greases, and lubricants bought by or for the State Department of Transportation for use in the construction, maintenance, and repair of the county roads and bridges shall be purchased from vendors and suppliers residing in the county where such motor fuels, oils, greases and lubricants are to be used.

Local Agencies: Contracts for which competitive bidding required generally, Ala. Code §41-16-50. Bids for items of personal property where the county, a municipality, or an instrumentality thereof is awarding authority, may award to bidder that is resident of "local preference zone" if bid is no more than 3% greater than that of the lowest bid.

Public Contracts: Contracts for which competitive bidding required; award to preferred vendor, Ala. Code §41-16-20. Public contracts of $7,500 or more awarded to "preferred vendor" if price not more than 5% greater than lowest responsible bidder. Definition of "preferred vendor" includes priority preference ranking and centers on location of business within the state. Public Works contracts are specifically excluded as they are governed exclusively by Title 39 of the Code of Alabama. See reciprocal preference below.

ALABAMA RECIPROCAL PREFERENCE

Public Works: Preference to resident contractors in letting of certain public contracts, Ala. Code §39-3-5. Preference given to resident contractors for public contracts using state, county, or municipal funds-application of reciprocal preference to nonresident bidder.

ALASKA

ALASKA RESIDENT BIDDER PREFERENCE

Art: Art requirements for public buildings and facilities, Alaska Stat. §35.27.020. Use of state cultural resources and selection of Alaska resident artists for commission of art works for public buildings and facilities is encouraged.

Pilot Program for State Procurement and Electronic Commerce Tools: Evaluation and award, HB 257, 24th Leg., Sec. 5, 2006 SLA ch. 113 (eff. Dec. 12, 2006). Alaska bidder preference of 5% for contracts based on solicited bids; Alaska bidder offering services through an employment program shall receive 15% cost preference during evaluation; Alaska bidder that is qualifying entity shall receive 10% cost preference during evaluation; Alaska bidder with 50% or more of the bidder's employees qualified as persons with disabilities shall receive 10% cost preference during evaluation; Alaska bidder preference of 5% for insurance-related contracts.

Public Contracts: Competitive Sealed Bidding--Contract award after bids, Alaska Stat. §36.30.170. Alaska bidder preference of 5% for contracts based on solicited bids; Alaska bidder offering services through an employment program shall be awarded contract if bid not more than 15% higher than lowest bid; Alaska bidder preference of 5% for insurance-related contracts; Alaska bidder that is "qualifying entity" shall be awarded contract if bid is not more than 10% higher than lowest bid; Alaska bidder with 50% or more of the bidder's employees qualifying as persons with a disability shall be awarded contract if bid is not more than 10% higher than lowest bid.

Public Contracts: Competitive Sealed Proposals--Award of contract, Alaska Stat. §36.30.250. Procurement officer shall take into account whether offeror qualifies as Alaska bidder in determining whether a proposal is advantageous to the state.

Public Contracts: Evaluation of proposals, Alaska Admin. Code tit. 2, §12.260. Proposed price of Alaska bidder reduced by 5%; Numerical rating system-10% of total possible value assigned to proposal of Alaska bidder.

AMERICAN SAMOA

AMERICAN SAMOA RESIDENT BIDDER PREFERENCE

Procurement Contracts: Local preference, Am. Samoa Code Ann. §12.0210. Construction bids from off-island bidders not accepted where contract value is estimated at 1.5 million dollars or less. For works valued over 1.5 million dollars, 10% add-on to off-island bidder.

For goods or services add-on percentages to bid of lowest off-island bidder applied as follows:

Up to $10,000: 25%

More than $10,000 up to $50,000: 12%

More than $50,000 up to $100,000: 10%

More than $100,000 up to $200,000: 5%

More than $200,000: -0-

Local bidder awarded contract if bid equal to or less than off-island bidder after applicable add-on percentages.

Procurement Contracts: Local preference and evaluation, Am. Samoa Admin. Code §10.0272. Construction-Contract value estimated at $50,000 or less restricted to local bidders only; contract value estimated to exceed $50,000 add-on percentages to bid of lowest off-island bidder applied as follows:

$50,001 to $100,000: 10%

$100,001 to $200,000: $10,000 plus 5% of amount over $100,000

More than $200,000: $15,000

For goods or services add-on percentages to bid of lowest off-island bidder applied as follows:

Up to $10,000: 25%

$10,001 to $50,000: $2,500 plus 12% of amount over $10,000

$50,000 to $100,000: $7,300 plus 10% of amount over $50,000

$100,001 to $200,000: $12,300 plus 5% of amount over $100,000

More than $200,000: $17,300

Local bidder awarded contract if bid equal to or less than off-island bidder after applicable add-on percentages.

ARKANSAS

ARKANSAS RESIDENT BIDDER PREFERENCE

Art: Selection committees, Ark. Code Ann. §13-8-206(c)(2). If all factors equivalent, preference given to works of art by Arkansas artists.

Commodities: Preference of Arkansas firms, Ark. Code Ann. §19-11-259(B). If at least one bidder makes written claim for residency preference, preference given to resident Arkansas firm if bid not more than 5% of lowest nonresident bid. Bidder receiving preference for recycled paper may not also receive residency preference, *see* **Ark. Code Ann. §19-11-260.**

Professional Services: Evaluation of qualifications, Ark. Code Ann. §19-11-803. In evaluating qualifications shall consider firm's proximity to the area in which the project is located.

Purchasing and Contracts: Priority to private industries, Ark. Code Ann. §19-11-304. Preference given to private industries located within Arkansas and employing Arkansas taxpayers over out-of-state penal institutions employing convict labor.

Purchasing and Contracts: Multiple private industry bids, Ark. Code Ann. §19-11-305. Preference given to Arkansas bidder if bid not more than 5% over lowest nonresident private industry bidder and not more than 15% over lowest out-of-state correctional institution bidder.

CALIFORNIA

CALIFORNIA RESIDENT BIDDER PREFERENCE

Agricultural Aircraft Operators: Giving contracts and purchasing supplies from residents, Cal. Gov't Code §4361. Preference given to agricultural aircraft operators who are residents if bids do not exceed by more than 5% of lowest bid of nonresident agricultural aircraft operators.

Art in Public Buildings: State architect and council; duties, Cal. Gov't Code §15813.3. Preference may be given to artists who are California residents.

Employment and Economic Incentive Act: Worksite preference-contract for goods, Cal. Code Regs. tit. 2, §1896.101. For contract in excess of $100,000, preference of 5% for California based companies with no less than 50% of labor accomplished at worksite or worksites located in program area.

Employment and Economic Incentive Act: Hiring preference-contract for goods, Cal. Code Regs. tit. 2, §1896.102. Additional preferences for bidder complying with rule 1896.101 from 1% to 4% in accordance with Cal. Gov't Code §7084.

Employment and Economic Incentive Act: Worksite preference-contract for services, Cal. Code Regs. tit. 2, §1896.104. For contract for services in excess of $100,000, preference of 5% for California companies that perform contract at worksite or worksites located in program area.

Employment and Economic Incentive Act: Hiring preference-contract for services, Cal. Code Regs. tit. 2, §1896.105. Additional preferences for bidder complying with rule 1896.104 from 1% to 4% in accordance with Cal. Gov't Code §7084.

Enterprise Zone Act: State contracts for goods; preferences for bidders with worksites in enterprise zones, Cal. Gov't Code §7084. Subsection (a) - Preference of 5% when the state prepares a solicitation for a *contract for goods* in excess of $100,000 to California based companies who certify that not less than 50% of the labor hours required to perform the contract shall be accomplished at a worksite or worksites located in an enterprise zone.

Subsection (b) - Preference of 5% in evaluating proposals for *contracts for services* in excess of $100,000 to California based companies who certify that not less than 90% of the labor hours required to perform the contract shall be accomplished at a worksite or worksites located in an enterprise zone.

Subsection (c) - Bidders complying with subsection (a) or (b) receive additional preference as follows:

1% preference given to bidders who agree to hire persons living within a targeted employment area or enterprise zone equal to 5 to 9% of its workforce.

2% preference given to bidders who agree to hire persons living within a targeted employment area or enterprise zone equal to 10 to 14% of its work force.

3% preference given to bidders who agree to hire persons living within a targeted employment area or enterprise zone equal to 15 to 19% of its workforce.

4% preference given to bidders who agree to hire persons living within a targeted employment area or enterprise zone equal to 20% or more of its workforce during the period of the contract performance.

Subsection (e) - Small business bidders qualified in accordance with §14838 shall have preference over nonsmall business bidders.

Local Agency Military Base Recovery Area Act: Preferences awarded to bidders on state contracts, Cal. Gov't Code §7118. Subsection (a) - Preference of 5% is awarded to California-based companies in *contracts for goods* in excess of $100,000 if no less than 50% of the labor required to perform the contract is accomplished at a worksite or worksites located in a local agency military base recovery area ("LAMBRA").

Subsection (b) - Preference of 5% is awarded to California-based companies in *contracts for services* in excess of $100,000 if no less than 90% of the labor required to perform the contract is accomplished at a worksite or worksites located in a local LAMBRA.

Subsection (c) - Bidders complying with subsection (a) or (b) receive additional preference as follows:

1% preference for bidders who agree to hire persons living within a LAMBRA that is equal to 5 to 9% of its work force during the period of contract performance.

2% preference for bidders who agree to hire persons living within a LAMBRA that is equal to 10 to 14% of its work force during the period of contract performance.

3% preference for bidders who agree to hire persons living within a LAMBRA that is equal to 15 to 19% of its work force during the contract performance.

4% preference for bidders who hire persons living within a LAMBRA that is equal to 20% or more of its work force during the contract performance.

Subsection (e) - Small business bidder qualified in accordance with §14838 given preference over nonsmall business bidder.

Public Contracts: Acquisition of information technology goods and services, Cal. Pub. Cont. Code §12102. Preference of 5% for small business.

Small Business: Application of preferences, Cal. Code Regs. tit. 2, §1896.6. Small Businesses granted 5% preference.

Small Business: Computing the preferences, Cal. Code Regs. tit. 2, §1896.8. Application of small business preference.

Small Business: Eligibility for Certification as small business, Cal. Code Regs. tit. 2, §1896.12. Eligibility for certification as small business includes requirement that the principal office is located in California.

Small Business Procurement and Contract Act: Definitions, Cal. Gov't Code §14837. Definition of "small business" includes requirement that the principal office of the business is located in California.

Small Business Procurement and Contract Act: Duties of directors of General Services and other state agencies, Cal. Gov't Code §14838. Small business given 5% preference over the lowest responsible bidder meeting specifications in state procurement, construction contracts, and in service contracts. The maximum small business preference shall not exceed $50,000 for any bid and the combined cost for preferences granted by law shall not exceed $100,000.

Target Area Contract Preference Act: Legislative declaration and intent, Cal. Gov't Code §4531. Preference for California based companies submitting bids or proposals for state contracts to be performed at worksites in distressed areas by persons with a high risk of unemployment when the contract is for goods or services in excess of $100,000.00.

Target Area Contract Preference Act: Contracts for goods; preference to companies performing contracts in distressed areas, Cal. Gov't Code §4533. Preference of 5% in contracts for goods in excess of $100,000 given to California based companies that have at least 50% of the labor hours required to manufacture the goods and perform the contract performed at a worksite or worksites located in a distressed area.

Target Area Contract Preference Act: Contracts for goods; additional preference, Cal. Gov't Code §4533.1. Additional preference awarded to bidders for contracts of goods in excess of $100,000 and who comply with §4533 in following amounts:

1% preference for bidders who agree to hire persons with high risk of unemployment equal to 5 to 9% of its work force during the period of contract performance;

2% preference for bidders who agree to hire persons with high risk of unemployment equal to 10 to 14% of its work force during the period of contract performance;

3% preference for bidders who agree to hire persons with high risk of unemployment equal to 15 to 19% of its workforce during the period of contract performance; and

4% preference for bidders who agree to hire persons with high risk of unemployment equal to 20% or more of its workforce during the period of contract performance.

Target Area Contract Preference Act: Contracts for services; preference to companies performing contract in distressed areas, Cal. Gov't Code §4534. Preference of 5% in contracts for services in excess of $100,000 given to California based companies that have no less than 90% of the labor required for the contract performed at a worksite or worksites located in a distressed area.

Target Area Contract Preference Act: Contracts for services; additional preferences, Cal. Gov't Code §4534.1. Additional preference awarded to bidders for contracts for services in excess of $100,000 and who comply with §4534 in following amounts:

1% preference for bidders who agree to hire persons with high risk of unemployment equal to 5 to 9% of its work force during the period of contract performance;

2% preference for bidders who agree to hire persons with high risk of unemployment equal to 10 to 14% of its work force during the period of contract performance;

3% preference for bidders who agree to hire persons with high risk of unemployment equal to 15 to 19% of its workforce during the period of contract performance; and

4% preference for bidders who agree to hire persons with high risk of unemployment equal to 20% or more of its workforce during the period of contract performance.

Target Area Contract Preference Act: Maximum preference; small business bidder preference, Cal. Gov't Code §4535.2. The maximum preference and incentive a bidder may be awarded under Chapter

10.5, the Target Area Contract Preference Act, is 15% and is not to exceed a cost preference of $50,000. The combined cost of preferences and incentives granted pursuant to Chapter 10.5 and any other provision of law is not to exceed $100,000. Small business bidders qualified in accordance with §14838 shall have precedence over non-small business bidders.

Target Area Contract Preference Act: Worksite preference-purchase of goods, Cal. Code Regs. tit. 2, §1896.31. For contract in excess of $100,000, preference of 5% for California based companies who certify that no less than 50% of labor shall be accomplished at worksite located in distressed area.

Target Area Contract Preference Act: Hiring preference-purchase of goods, Cal. Code Regs. tit. 2 §1896.32. Additional preferences for bidder complying with rule 1896.31 from 1% to 4% in accordance with Cal. Gov't Code §4533.1.

Target Area Contract Preference Act: Worksite preference-contract for services, Cal. Code Regs. tit. 2, §1896.34. For contract for services in excess of $100,000, preference of 5% for California based companies that perform contract at worksite or worksites located in distressed area.

Target Area Contract Preference Act: Hiring Preference-contract for services, Cal. Code Regs. tit. 2, §1896.35. Additional preferences for bidder complying with rule 1896.34 from 1% to 4% in accordance with Cal. Gov't Code §4534.1.

CALIFORNIA RECIPROCAL PREFERENCE

Public Contracts: California company; reciprocal preference against nonresident contractors, Cal. Pub. Cont. Code §6107. Application of reciprocal preference.

COLORADO

COLORADO RESIDENT BIDDER PREFERENCE

Agricultural Products: Preference for state agricultural products, Colo. Rev. Stat. Ann. §8-18-103. Contract awarded to resident bidder who produces products in state if of equal quality, suitable for bid, sufficient in quantity, and bid price equal or not reasonably exceeding lowest bid.

Commodities: Bid preference-state contracts, Colo. Rev. Stat. Ann. §8-18-101(b). In invitation for bids for commodities contract, low tie bids between resident bidder and nonresident bidder-resident bidder given preference.

Contracts: Preferences, 1 Colo. Code Regs. Art. 111, R-24-111-102-02. In event of tie bids for commodities, preference given to resident bidder.

Design-Build Contracts: General procedures, Colo. Rev. Stat. Ann. §43-1-1406. Preference to Colorado residents.

Professional Services: Preliminary selections, Colo. Rev. Stat. Ann. §24-30-1403. In selection, Colorado firms given preference when qualifications appear to be equal.

Source Selection: Low tie Bids-award procedure and determination-bid preference, Colo. Rev. Stat. Ann. §24-103-202.5. In invitation for bids for supply contract, low tie bids between resident bidder and nonresident bidder-resident bidder given preference.

COLORADO RECIPROCAL PREFERENCE

Commodities and Services: Bid preference-state contracts, Colo. Rev. Stat. Ann. §8-18-101(a). Application of reciprocal preference.

Construction Project: Bid preference-public projects, Colo. Rev. Stat. Ann. §8-19-101. Application of reciprocal preference.

Public Projects: Resident bidder-reciprocity, Colo. Rev. Stat. Ann. §8-19-192.5. Application or reciprocal preference.

CONNECTICUT

CONNECTICUT RESIDENT BIDDER PREFERENCE

Purchases and Printing: Award of contracts, Conn. Gen. Stat. §4a-59. All other factors being equal, preference given to services originating and provided in Connecticut.

DELAWARE

DELAWARE RESIDENT BIDDER PREFERENCE

Public Works: Large public works contract procedure-preference for Delaware labor, Del. Code Ann. Tit. 29, §6962(d)(4)(b). Preference for Delaware laborers, workers or mechanics in the construction of all public works for the State of Delaware or any political subdivision, or by firms contracting with the State or any political subdivision thereof.

DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA RESIDENT BIDDER PREFERENCE

Procurement: District-based businesses preference, D.C. Code §2-303.01. Preference for the purchase of materials, equipment, and supplies sold by District-based businesses under rules set by the mayor.

FLORIDA

FLORIDA RESIDENT BIDDER PREFERENCE

Commodities: Source Selection, bid openings and contract awards-preference to bidders within the state, Fla. Admin. Code Ann. r. 25-25.009(5). Preference to bidders within Florida if commodities can be purchased at no greater expense, and of equal quality.

Procurement: Minority business companies, Fla. Admin. Code Ann. r. 25-25.025. If bids/proposals identical, preference given to minority owned company. Definition of minority and minority business contains requirement that minority is resident of Florida or business domiciled in Florida. **Fla. Stat. Ann. §288.703.**

Public Buildings: Preference to home industries in building public buildings, Fla. Stat. Ann. §255.04. In erecting or constructing any public administrative or institutional building, preference given in letting of contracts for construction to materialmen, contractors, builders, architects, and laborers who reside in Florida as long as can be employed at no greater expense than nonresident.

Public Printing: Preference given printing within the state, Fla. Stat. Ann. §283.35. In contract to have materials printed, preference given to vendors located within Florida as long as printing can be done at no greater expense.

FLORIDA RECIPROCAL PREFERENCE

Commodities, Insurance and Contractual Services: Preference to Florida businesses, Fla. Stat. Ann. §287.084. Application of reciprocal preference in purchases of personal property.

GEORGIA

GEORGIA RESIDENT BIDDER PREFERENCE

Art: Duties of Georgia Council for the Arts, Ga. Code Ann. §8-5-5. Preference may be given to artists who are Georgia residents.

Purchasing: Preference to Georgia products, etc., Ga. Code Ann. §50-5-60. Intention of subsection that the state use Georgia labor.

Purchasing: Preference to local sellers, Ga. Code Ann. §50-5-62. All things being equal, preference given to local sellers of Georgia products.

GEORGIA RECIPROCAL PREFERENCE

Purchasing: Preference to Georgia products, etc., Ga. Code Ann. §50-5-60. Application of reciprocal preference.

GUAM

GUAM RESIDENT BIDDER PREFERENCE

Art in Public Buildings: Arts in public buildings and facilities, Guam Code Ann. tit. 1, §852. Preference for local artists if available.

Procurement: Local procurement preference, 2 Guam Admin. R. & Regs. §1104. All procurement of supplies, and procurement of services shall be made from among businesses licensed to do business on Guam and that maintain an office or other facility on Guam.

Procurement: Policy in favor of local procurement, Guam Code Ann. tit. 5, §5008. All procurement of supplies and services shall be made from among businesses licensed to do business on Guam and that maintain an office or other facility on Guam.

HAWAII

HAWAII RESIDENT BIDDER PREFERENCE

Economic Development: Contracts, Haw. Rev. Stat. §201-4. The department of business, economic development and tourism may contract with qualified private and public agencies, associations, firms, or individuals provided that preference is given to contractors within the state.

Procurement Policy: Evaluation procedure and contract award-Hawaii products, Haw. Code R. §3-124-5. Order of preferences where more than one preference applicable.

Procurement Policy: Evaluation procedure and contract award-Printing, binding, and stationery, Haw. Code R. §3-124-12. Order of preferences where more than one preference applicable.

Procurement Policy: Evaluation procedure and contract award-Reciprocal, Haw. Code R. §3-124-18. Order of preferences where more than one preference applicable.

Procurement Policy: Evaluation procedure and contract award-Recycled products, Haw. Code R. §3-124-25. Order of preferences where more than one preference applicable.

Procurement Policy: Solicitation procedures-Software development businesses, Haw. Code R. §3-124-34. Hawaii software development businesses given 10% preference for evaluation.

Procurement Policy: Evaluation procedure and contract award-Software development businesses, Haw. Code R. §3-124-35. Order of preferences where more than one preference applicable.

Procurement Policy: Evaluation procedure and contract award-Tax preference, Haw. Code R. §3-124-55. Order of preferences where more than one preference applicable.

Procurement Policy: Evaluation procedure and contract award-Qualified Community Rehabilitation Programs, Haw. Code R. §3-124-64. Order of preferences where more than one preference applicable.

Software Development: Software development businesses, Haw. Rev. Stat. §103D-1006. In any expenditure of public funds for software development, use of Hawaii software development businesses preferred. Bids of non-Hawaii software development businesses increased by certain percentage set by rule.

HAWAII RECIPROCAL PREFERENCE

Procurement: Reciprocity, Haw. Rev. Stat. §103D-1004. Application of reciprocal preference. Definition of "resident bidder" used by other state in applying preference applies.

Procurement Policy: Applicability--Reciprocal, Haw. Code R. §3-124-17. Application of reciprocal preference.

IDAHO

IDAHO RESIDENT BIDDER PREFERENCE

Property: Requisitions for property-Notice-Form-Guarantee-Procedure for bidding, Idaho Code Ann. §67-5718. Preference given to bidders having a significant Idaho economic presence.

Purchasing: Tie Bids-Award, Idaho Admin. Code r. 38.05.01.082. To discourage tie bid, may award to an Idaho resident or an Idaho domiciled bidder.

IDAHO RECIPROCAL PREFERENCE

Paper: Preference for Idaho suppliers and recycled paper products for purchases, Idaho Code Ann. §67-2349. Application of reciprocal preference. Bidder domiciled outside the boundaries of Idaho considered Idaho domiciled bidder if significant Idaho economic presence for one year preceding the date of the bid.

Public Works: Preference for Idaho domiciled contractors on public works, Idaho Code Ann. §67-2348. Application of reciprocal preference.

ILLINOIS

ILLINOIS RESIDENT BIDDER PREFERENCE

Commodities: Purchase for public institutions of commodities in other states; preferences, 30 Ill. Comp. Stat. Ann. 520/2. In purchasing commodities from vendors in other state, give preference to vendors whose home state does not prohibit purchase of Illinois commodities.

Procurement: Resident Bidder Preference, Ill. Admin. Code tit. 44, 1.4510. In breaking a tie, award given to resident vendor.

Purchases: Resident Vendor Preference, Ill. Admin. Code tit. 44, 500.1110(c). In breaking a tie, award given to resident vendor.

ILLINOIS RECIPROCAL PREFERENCE

Contracts: Resident bidders, 30 Ill. Comp. Stat. Ann. 500/45-10. Application of reciprocal preference.

Purchases: Resident Vendor Preference, Ill. Admin. Code tit. 44, 500.1110(a). Application of reciprocal preference.

INDIANA

INDIANA RESIDENT BIDDER PREFERENCE

Public Works: Preference rules, Ind. Code Ann. §4-13.6-6-2.5. Department of Administration may adopt rules to give preference to Indiana Business.

Public Works: "Indiana business"; price preferences, Ind. Code Ann. §4-13.6-6-2.7.

(c) Price preferences for contractor that is Indiana Business:

(1) 5% for contract expected to be less than $500,000

(2) 3% for contract expected to be at least $500,000 but less than $1,000,000

(3) 1% for contract expected to be at least $1,000,000

(d) Contract awarded to lowest responsive and responsible contractor regardless of preference if:

(1) contractor is Indiana contractor; or

(2) nonresident contractor from state bordering Indiana and the home state does not provide a preference to home state's contractors more favorable than is provided by Indiana law to Indiana contractors.

Purchasing Preferences: Preference to Indiana businesses; rules, Ind. Code Ann. §5-22-15-20. Governmental body, except state lottery commission, may adopt rules to give preference to Indiana business under certain circumstances. Rules may not give preference that is more favorable to Indiana business than the other state's preference to other state's businesses. Rules must provide that contract awarded to lowest responsive and responsible offeror, regardless of preferences, if offeror is Indiana business or offeror is nonresident from state bordering Indiana and the home state does not provide a preference to home state's businesses more favorable than is provided by Indiana law to Indiana businesses.

Purchasing Preferences: Preferences for supplies, Ind. Code Ann. §5-22-15-20.5.

(d) Price preferences for supplies purchased from Indiana business:

(1) 5% for purchase expected to be less than $500,000

(2) 3% for purchase expected to be at least $500,000 but less than $1,000,000

(3) 1% for purchase expected to be at least $1,000,000

(e) Contract awarded to lowest responsive and responsible offeror regardless of preference if:

(1) offeror is Indiana business; or

(2) offeror is nonresident from state bordering Indiana and the home state does not provide preference to home state's businesses more favorable than is provided by Indiana law to Indiana businesses.

Small Business: Price preference for supplies to Indiana small businesses, Ind. Code Ann. §5-22-15-23. Governmental body shall give 15% preference for supplies to Indiana small business.

State Policy: Establishment of the "Buy Indiana" presumption, Ind. Exec. Order No. 05-05 (Jan. 10, 2005). State procurement subject to a "Buy Indiana" presumption requiring state agencies to buy their supplies and services from "Indiana businesses." Department of Administration to increase percentage of state procurement from Indiana businesses to 90% of state's total procurement volume.

IOWA

IOWA RESIDENT BIDDER PREFERENCE

Art in State Buildings: Competition of artists, Iowa, code Ann. §304A.13. Preference given to works by living or deceased Iowa artists.

Goods and Services of General Use: Preferred products and vendors, Iowa Admin. Code r. 11-105.5(8A). 105.5(2) - Preference to Iowa-based businesses. Make every effort to support Iowa-based businesses. Tied responses to solicitations decided in favor of Iowa-based business.

Purchasing: Competitive bidding-preferences-reciprocal application-direct purchasing, Iowa Code Ann. §8A.311. Preference given to Iowa-based businesses if comparable in price to bids submitted by out-of-state businesses.

Small Business: Procurements from small businesses-goals, Iowa Code Ann. §73.16. Requirement to purchase goods and services supplied by small businesses and establish procurement goal of at least 10% coming from such purchase.

Transportation: Contract award, Iowa Admin. Code r. 761-20.4(307). 20.4(6)(b) - Tie bids. First preference to Iowa bidder.

IOWA RECIPROCAL PREFERENCE

Public Contracts and Bonds: Reciprocal resident bidder preference by state, its agencies, and political subdivisions, Iowa Code Ann. §73A.21. Application of reciprocal preference. If another state has more stringent definition of resident bidder, the more stringent definition is applicable as to bidders from that state.

Purchasing: Competitive bidding-preferences-reciprocal application-direct purchasing, Iowa Code Ann. §8A.311. Application of reciprocal preference.

KANSAS

KANSAS RESIDENT BIDDER PREFERENCE

Contract and Purchases: Competitive bids; price preferences, Kan. Stat. Ann. §75-3740. Tie bids awarded to resident bidder.

KANSAS RECIPROCAL PREFERENCE

Contracts and Purchases: State and local government contracts; bidders domiciled in other states, Kan. Stat. Ann. §75-3740a. Application of reciprocal preference.

KENTUCKY

KENTUCKY RESIDENT BIDDER PREFERENCE

Commonwealth Bond Counsel Business: Preference for Kentucky firms, Ky. Rev. Stat. Ann. §45A.873(2). Resident bidder ranked one place ahead of out-of-state firm in tie vote.

KENTUCKY RECIPROCAL PREFERENCE

Commonwealth Bond Counsel Business: Preference for Kentucky firms, Ky. Rev. Stat. Ann. §45A.873(1)(a). Application of reciprocal preference.

LOUISIANA

LOUISIANA RESIDENT BIDDER PREFERENCE

Competitive Sealed Bidding: Tie bids, La. Admin. Code tit. 34, §529(B)(1). Preference to resident business in tie bid if no sacrifice or loss of quality.

Land-Based Casino Contracts: Utilization of Louisiana goods and services, La. Rev. Stat. Ann. §27:246. Preference and priority given to Louisiana residents, laborers, vendors, and suppliers in contracts for goods and services if reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operational efficiency.

Materials, Supplies and Provisions: Preference to firms doing business in state, La. Rev. Stat. Ann. §38:2253. All things being equal, preference given to firms doing business in Louisiana. Preference inferior to and superseded where conflicting with La. Rev. Stat. Ann. §38:2251 (Louisiana products preferences).

Materials, Supplies and Provisions: Printing contracts, La. Rev. Stat. Ann. §38:2255. For purchases of printing, lithographing, embossing, engraving, binding, record books, printed supplies, stationery and office supplies and equipment, shall be purchased from Louisiana firms and printing, lithographing, embossing, engraving, and binding done in Louisiana by Louisiana firms unless bid submitted by firm

outside Louisiana is 3% lower. Does not apply to specialized forms and printing, such as continuous forms, margin punched forms, football tickets, 24 sheet poster, music printing, steel dye and lithographed bonds, decalcomanias, revenue stamps, lithographing and bronzing on acetate, college annuals, fine edition binding, and books.

Materials, Supplies and Provisions: Supplies not ordinarily obtainable from Louisiana firms, La. Rev. Stat. Ann. §38:2256. Permissible to purchase supplies not ordinarily obtainable from Louisiana firms from applicable non-resident firms; however, Louisiana firms shall be given opportunity to furnish supplies and given preference.

Public Contracts: Preference given to supplies, material, or equipment produced or offered by Louisiana citizens, La. Rev. Stat. Ann. §38:2184. Cost and quality being equal, preference to supplies, material, or equipment produced or offered by Louisiana citizens.

Public Contracts: Preference for products produced or manufactured in Louisiana, La. Rev. Stat. Ann. §38:2251. Preferences only apply to bidders whose Louisiana business workforce is comprised of a minimum of 50% of Louisiana residents.

Subsection (B) - For purchases of agricultural or forestry products, including meat, seafood, produce, eggs, paper or paper products, preference given as long as product meets Louisiana product criteria; product is equal to or better in quality; and cost does not exceed by more than 10% the cost of other products.

Subsection (D) - For purchases of meat and meat products which are further processed in Louisiana under the grading and certification service of the Louisiana Department of Agriculture and Forestry, preference given if equal in quality to other meat and meat products and cost does not exceed by more than 7% cost of other products.

Subsection (E) - For purchases of domesticated or wild catfish which are processed in Louisiana but grown outside Louisiana, preference given if equal in quality and cost does not exceed by more than 7% cost of catfish processed outside Louisiana.

Subsection (G) - For purchases of produce processed in Louisiana but grown outside Louisiana, preference given if equal in quality and cost does not exceed by more than 7% cost of produce processed outside Louisiana.

Subsection (H) - Except as otherwise provided in this Section, for purchases of materials, supplies, or equipment which are Louisiana products, preference given if equal in quality; cost of such items does not exceed cost by more than 10% of the cost of other items manufactured, processed, produced, or assembled outside the state; and vendor agrees to sale price equal to lowest bid offered.

Preferences do not apply to Louisiana products whose source is a clay which is mined or originates in Louisiana, and which is manufactured, processed or refined in Louisiana for sale as an expanded clay aggregate form different than its original state; do not affect preferences applicable to brick manufacturers; do not apply to fire fighting or rescue equipment; and do not apply to treated wood poles and piling.

Furthermore, provisions do not apply to drainage district or sewerage and water board located in a municipality with population in excess of 500,000 wherein the cost of products produced or manufactured in the state of Louisiana does not exceed by more than 5% the cost of products which are equal in quality to products produced or manufactured outside of the state in purchases of one million dollars or more, as provided by Acts 880 and 693 of the 1985 Regular Session of the Louisiana Legislature.

Public Contracts: Requests for bids and proposals to contain reference to preference, La. Rev. Stat. Ann. §38:2252. Requests for bids and proposals must contain following language: "Preference is hereby given to materials, supplies and provisions, produced, manufactured or grown in Louisiana, quality being equal to articles offered by competitors outside of the state."

Retail: Preference for items purchased from Louisiana retailers, La. Rev. Stat. Ann. §39:1595.5. When purchasing items at retail, purchase shall be from retail dealer located in Louisiana as long as equal in quality and cost does not exceed by more than 10% cost of items from retail dealer located outside state.

Rodeos and Livestock Shows: Preference in awarding contracts for certain services, La. Rev. Stat. Ann. §39:1595.3. For services to organize or administer rodeos and livestock shows, where state-owned facilities used to house or contain such activities, preference given in-state vendors if services equal in quality and does not exceed cost by more than 10% services available from outside state.

Small Purchase Procedures: Governor Kathleen Babineaux Blanco, Louisiana Executive Order No. KBB 2004-30 (Aug. 20, 2004). Pursuant to La. Rev. Stat. Ann. §39:1596 authorizing the governor to establish procedures for procurement of small purchases, Louisiana businesses should be utilized to the greatest extent possible when soliciting prices.

Source Selection: Preference for all types of products produced, manufactured, assembled, grown, or harvested in Louisiana, La. Rev. Stat. Ann. §39:1595. Preferences only apply to bidders whose Louisiana business workforce is comprised of a minimum of 50% of Louisiana residents.

Subsection (B) - For purchases of agricultural or forestry products, including meat, seafood, produce, eggs, paper or paper products, preference given as long as product meets Louisiana product criteria; product is equal to or better in quality; and cost does not exceed by more than 10% the cost of other products.

Subsection (D) - For purchases of meat and meat products which are further processed in Louisiana under the grading and certification service of the Louisiana Department of Agriculture and Forestry, preference given if equal in quality to other meat and meat products and cost does not exceed by more than 7% cost of other products.

Subsection (E) - For purchases of domesticated or wild catfish which are processed in Louisiana but grown outside Louisiana, preference given if equal in quality and cost does not exceed by more than 7% cost of catfish processed outside Louisiana.

Subsection (F) - For purchases of produce processed in Louisiana but grown outside Louisiana, preference given if equal in quality and cost does not exceed by more than 7% cost of produce processed outside Louisiana.

Subsection (G) - For purchases of eggs or crawfish which are further processed in Louisiana under the grading service of the Louisiana Department of Agriculture and Forestry, preference given if equal in quality and cost does not exceed by more than 7% cost of other eggs or crawfish.

Subsection (H) - Except as otherwise provided in this Section, for purchases of materials, supplies, products, provisions, or equipment which are manufactured, or assembled in Louisiana, preference given if equal in quality; cost of such items does not exceed cost by more than 10% of the cost of other items manufactured, processed, produced, or assembled outside the state; and vendor agrees to sale price equal to lowest bid offered.

Preferences do not apply to Louisiana products whose source is a clay which is mined or originates in Louisiana, and which is manufactured, processed or refined in Louisiana for sale as an expanded clay aggregate form different than its original state; do not affect preferences applica-

ble to brick manufacturers; and do not apply to treated wood poles and piling.

LOUISIANA RECIPROCAL PREFERENCE

Public Works: Preference in letting contracts for public work, La. Rev. Stat. Ann. §38:2225. Application of reciprocal preference for contractors bidding on public work.

Source Selection: Preference in awarding contracts, La. Rev. Stat. Ann. §39:1595.1. Application of reciprocal preference for contract by any public entity. Does not apply to contracts for construction, maintenance, or repair of highways and streets.

Source Selection: Preference in letting contracts for public work, La. Rev. Stat. Ann. §39:1595.2. Application of reciprocal preference.

Transportation Department: Preference in letting contracts for public works, La. Rev. Stat. Ann. §48:255.6. Application of reciprocal preference for projects of Department of Transportation and Development.

MAINE

MAINE RESIDENT BIDDER PREFERENCE

Labor: Local residents preferred; exception, Me. Rev. Stat. Ann. Tit. 26, §1301. Preference to workmen and bidders who are residents of Maine for contracts for constructing, altering, repairing, furnishing or equipping buildings or public works.

Purchasing: Bids, awards and contracts, Me. Rev. Stat. Ann. Tit. 5, §1825-B(8). Tie bid awarded to in-state bidders.

MAINE RECIPROCAL PREFERENCE

Purchasing: Bids, awards and contracts, Me. Rev. Stat. Ann. Tit. 5, §1825-B(9). Application or reciprocal preference.

MARYLAND

MARYLAND RESIDENT BIDDER PREFERENCE

Procurement: Resident bidders; resident offerors, Md. Code Ann., State Fin. & Proc. §14-401. Application of preference to resident bidders, offerors including preference application similar to reciprocity.

MARYLAND RECIPROCAL PREFERENCE

Local Subdivisions: Definitions, Md. Code Ann. art. 24, §8-102. Application of reciprocal preference to Maryland business entity.

Procurement: Reciprocal Preferences, Md. Code Regs. 21.05.01.04. Conditions and application for giving preference to resident business.

MICHIGAN

MICHIGAN RESIDENT BIDDER PREFERENCE

Counties: County purchasing, Mich. Comp. Laws §45.85. Other things being equal, supplies offered by bidders with established local business in county have preference.

Purchasing: Purchases of supplies, Mich. Comp. Laws §18.1261. All other things being equal, preference given to products manufactured or services offered by Michigan-based firms.

MICHIGAN RECIPROCAL PREFERENCE

Purchasing: Bidders for state contracts; preference, Mich. Comp. Laws §18.1268. Application of reciprocal preference.

MINNESOTA

MINNESOTA RESIDENT BIDDER PREFERENCE

Building and Construction: Contracts; award, Minn. Stat. Ann. §16C.28. For construction contracts preferences for small businesses and reciprocal preference apply but not cumulative.

Small Business: Preference procurements from economically disadvantaged small businesses, Minn. R. 1230.1830. For commodities and services, small business awarded up to 6% preference. For Construction projects, small business awarded up to 4% preference.

State Contracts: Tied Bids, Minn. R. 1230.0900. Preference given to Minnesota firm.

Procurement: Designation of procurements from small businesses, Minn. Stat. Ann. §16C.16. For specified goods or services, may award up to 6% preference to small targeted group businesses. For construction contracts, may award up to 4% preference to small businesses located in economically disadvantaged area.

MINNESOTA RECIPROCAL PREFERENCE

Building and Construction: Contracts; award, Minn. Stat. Ann. §16C.28. For construction contracts preferences for small businesses and reciprocal preference apply but not cumulative.

Procurement: Acquisitions, Minn. Stat. Ann. §16C.06. Application of reciprocal preference.

MISSISSIPPI

MISSISSIPPI RESIDENT BIDDER PREFERENCE

Motor Vehicle: Certain motor vehicle purchases, Miss. Code Ann. §31-7-18. Authorization to accept the lowest bid received from motor vehicle dealer domiciled within county of governing authority for certain motor vehicles and price not greater than 3% of price or cost dealer pays manufacturer.

Printing, Stationery and Office Supplies: Definiteness of bids and contracts, Miss. Code Ann. §19-13-111. Where bids equal in all respects, preference given to citizens of Mississippi.

MISSISSIPPI RECIPROCAL PREFERENCE

Contractors: Resident contractor preference, Miss. Code Ann. §31-7-47. Application of reciprocal preference in letting of public contracts.

Engineers and Land Surveyors: Supervision of public works by engineer, Miss. Code Ann. §73-13-45. Application of reciprocal preference for public contracts for professional engineering services.

Public Contracts: Bidding process and requirements, Miss. Code Ann. §31-3-21. Application of reciprocal preference in letting of public contracts.

MISSOURI

MISSOURI RESIDENT BIDDER PREFERENCE

Counties: Preference in bids (second class counties), Mo. Ann. Stat. §50.780. Preference to merchants and dealers within the county may be given by county commissioners, provided the price is not above that offered elsewhere.

Higher Education: Preference for Missouri products, Mo. Code Regs. Ann. Tit. 6, §250-3.020(1)(D). University of Missouri-Preference given to Missouri firms, corporations or individuals.

State Purchases: Preference to Missouri products and firms, Mo. Ann. Stat. §34.070. Preference given to Missouri firms, corporations or individuals, when quality is equal or better and delivered price is same or less. Preference also given whenever competing bids, in their entirety, are comparable.

State Purchases: Missouri businesses, performance of jobs or services, preference, when, Mo. Ann. Stat. §34.073. In letting contracts for performance of job or service, preference given to Missouri firms, corporations, or individuals, or entities that maintain Missouri offices or places of business, when quality is equal or better and price is same or less. Preference also given whenever competing bids, in their entirety, are comparable.

MISSOURI RECIPROCAL PREFERENCE

State Purchases: Missouri contractors, public works, preference, when, exceptions, Mo. Ann. Stat. §34.076. Application or reciprocal preference for contract for public works or product.

MONTANA

MONTANA RECIPROCAL PREFERENCE

Public Contracts: State contracts to lowest bidder-reciprocity, Mont. Code Ann. §18-1-102. Application of reciprocal preference for purchase of goods and for construction, repair, and public works of all kinds.

State Printing: Printing, binding, and stationery work, Mont. Code Ann. §18-7-107. Application of reciprocal preference for all printing, binding, and stationery work for the state of Montana.

State Procurement: Reciprocal preference, Mont. Admin. R. 2.5.408. Application of reciprocal preference for bids; application of reciprocal preference for invitation for bids for supplies, printing, and nonconstruction services for public works.

NEBRASKA

NEBRASKA RESIDENT BIDDER PREFERENCE

Awards: Tie bids and preference, 9 Neb. Admin. Code §4-003. Nebraska vendors given preference in tie bids.

Blind and Visually Impaired, Commission for: In-state providers, 192 Neb. Admin. Code §1-005.05. Preference given to Nebraska service providers and businesses; restrictions on out-of-state vendors.

Business Assistance Division: Contracts, Neb. Rev. Stat. §81-1276. Division to give preference to entities based in or operating in Nebraska.

Nebraska Arts Council: Artists; how chosen, Neb. Rev. Stat. §82-323. Council shall give preference to regional artists.

NEBRASKA RECIPROCAL PREFERENCE

Awards: Tie bids and preference, 9 Neb. Admin. Code §4-003. Application of reciprocal preference.

Public Lettings: Resident bidder, defined; preference, Neb. Rev. Stat. §73-101.01. Application of reciprocal preference.

NEVADA

NEVADA RECIPROCAL PREFERENCE

State Purchasing: Inverse preference imposed on certain bidders resident outside State of Nevada, Nev. Rev. Stat. Ann. §333.336. Shall impose reciprocal preference to nonresident bidders.

NEW JERSEY

NEW JERSEY RECIPROCAL PREFERENCE

Public Works and Printing: Bidder with principal place of business in another state with laws or regulations causing disadvantage in another state, N.J. Stat. Ann. §52:32-1.4. Application of reciprocal preference.

Vendors: Preference laws; out-of-state vendors, N.J. Admin. Code §17:12-2.13. Application of reciprocal preference.

NEW MEXICO

NEW MEXICO RESIDENT BIDDER PREFERENCE

New York Exemption: Equal procurement access for New York businesses, N.M. Stat. §13-1-21.2. New York state business enterprises treated as New Mexico resident businesses or resident manufactures for all procurement purposes.

Procurement: Application of preferences, N.M. Stat. §13-1-21. Application of 5% preference for bids from resident businesses and resident manufacturers; application of 10% preference for resident businesses and resident manufacturers; section does not apply to purchase of buses.

Procurement: Statutory preferences, N.M. Code R. §1.4.1.25. Statutory preferences applied in determining low bidder-preferences for resident businesses, resident manufacturers, New York state business enterprises, and resident construction contractors.

Professional Services: Architects; engineer; landscape architects; surveyor; selection process, N.M. Stat. §13-1-120. Selection committee may consider amount of design work that will be produced by a New Mexico Business within this state and proximity to or familiarity with the area in which the project is located.

Public Works: Contracts, N.M. Stat. §13-4-1. Award all contracts for construction of public works or for repair, reconstruction, including highway reconstruction, demolition or alteration thereof, to resident contractor whenever practicable.

Public Works: Resident contractor defined; application of preference, N.M. Stat. §13-4-2. Application of 5% preference for resident contractor.

Residency: Resident business and manufacturer certification, N.M. Stat. §13-1-22. Resident business or manufacturer must qualify with state purchasing agent to receive preferences.

Telecommunications: Relay system enabling impaired individuals to communicate, N.M. State §63-9F-6. Application of 5% preference for resident.

NEW YORK

NEW YORK SANCTIONS ON NONRESIDENT BIDDERS

State Purchasing: Purchasing restrictions-Special provisions relating to retaliating against other jurisdictions which discriminate against New York State enterprises in their procurement of products and services, N.Y. State Fin. Law §165(6).

a. As used in this subdivision, the following terms shall have the following meanings unless a different meaning appears from the context:

(i) "Discriminatory jurisdiction" shall mean any other country, nation, province, state or political subdivision thereof which employs a preference or price distorting mechanism to the detriment of or otherwise discriminates against a New York state business enterprise in the procurement of commodities and services by the same or a non-governmental entity influenced by the same. Such discrimination may include, but is not limited to, any law, regulation, procedure or practice, terms of license, authorization, or funding or bidding rights which requires or encourages any agency or instrumentality of the state or political subdivision thereof or nongovernmental entity influenced by the same to discriminate against a New York state business enterprise.

(ii) "Foreign business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers

for sale, lease or other form of exchange, commodities sought by any state agency and which are substantially produced outside New York state or services, other than construction services, sought by any state agency and which are substantially performed outside New York state. For purposes of construction services, foreign business enterprise shall mean a business enterprise, including a sole proprietorship, partnership or corporation, which has its principal place of business outside New York state.

(iii) "New York state business enterprise" shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which offers for sale or lease or other form of exchange, commodities which are substantially manufactured, produced or assembled in New York state, or services, other than construction services, which are substantially performed within New York state. For purposes of construction services, a New York state business enterprise shall mean a business enterprise, including a sole proprietorship, partnership, or corporation, which has its principal place of business in New York state.

b. The commissioner of economic development shall have the power and it shall be his or her duty to prepare a list of all discriminatory jurisdictions. The commissioner of economic development shall add to or delete from said list any jurisdiction upon good cause shown. The commissioner of economic development shall deliver a copy of the list to the commissioner, all state agencies, and every public authority and public benefit corporation, a majority of the members of which consist of persons either appointed by the governor or who serve as members by virtue of holding a civil office of the state, or a combination thereof.

c. In including any additional business enterprises on solicitations for the procurement of commodities or services, the commissioner and all state agencies shall not include any foreign business enterprise which has its principal place of business located in a discriminatory jurisdiction contained on the list prepared by the commissioner of economic development pursuant to paragraph b of this subdivision, except, however, business enterprises which are New York state business enterprises as defined by this subdivision.

d. A state agency shall not enter into a contract with a foreign business enterprise, as defined by this subdivision, which has its principal place of business located in a discriminatory jurisdiction contained on the list prepared by the commissioner of economic development pursuant to paragraph b of this subdivision. The provisions of this paragraph and paragraph c of this subdivision may be waived by the head of the state agency if the head of the state agency determines in writing that it is in the best interests of the state to do so. The head of the state agency shall deliver each such waiver to the commissioner of economic development.

e. The commissioner may waive the application of the provisions of paragraph c of this subdivision whenever he or she determines in writing that it is in the best interests of the state to do so.

New York State Office of General Services Procurement Services Group, Appendix A, Standard Clauses for New York State Contracts, Clause 21. Reciprocity and Sanctions Provisions (June, 2006).

Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

NORTH CAROLINA

North Carolina Resident Bidder Preference

Purchases and Contracts: Preference given to North Carolina products and citizens, N.C. Gen. Stat. Ann. §143-59(a). Preference given as far as practicable to products or services furnished by or through citizens of North Carolina.

North Carolina Reciprocal Preference

Purchases and Contracts: Reciprocal preferences, N.C. Gen. Stat. Ann. §143-59(B). Application of reciprocal preference for contracts valued over $25,000.

NORTH DAKOTA

NORTH DAKOTA RECIPROCAL PREFERENCE

Atmospheric Resource Board: Award of contracts, N.D. Admin. Code 89-07-02-26. In awarding any contract, if all other factors are equal, reciprocal preference given to North Dakota Bidders.

Evaluating Bids: application of preference for North Dakota vendors, N.D. Admin. Code 4-12-11-02. Application of reciprocal preference.

Procurement: Preference to North Dakota bidders, sellers, and contractors, N.D. Cent. Code § 44-08-01. Application of reciprocal preference in purchasing any goods, merchandise, supplies, or equipment of any kind; or contracting to build or repair any building, structure, road, or other real property; or when accepting bids for the provision of professional services, including research and consulting services.

OHIO

OHIO RESIDENT BIDDER PREFERENCE

Contract Bidding: preference for U.S. and Ohio Products; bordering states, Ohio Rev. Code Ann. §125.09. Preference for Ohio products-bidders with a significant Ohio economic presence qualify for award on same basis as if products were produced in Ohio. Vendors from border states who do not impose greater restrictions on Ohio bidders are treated as Ohio bidders. Non-Ohio business restricted from bidding on printing contracts if home state excludes Ohio businesses from bidding on state printing contracts.

Printing: Printing to be done within state; exception for special paper, Ohio Rev. Cde Ann. §125.56. All printing to be executed within Ohio except for printing contracts requiring special, security paper. Preference given to Ohio bidders in printing contracts requiring special, security paper as long as the price is not a price that exceeds by more than 5% the lowest price submitted on a non-Ohio bid.

Local Entities: Model system of preference, Ohio Admin. Code 123:5-1-11. Bidders with significant Ohio economic presence qualify for award of contract on same basis as products produced in Ohio. Preference to Ohio bids or bidders from border states, provided border state imposes no greater restrictions than contained in this rule.

Purchasing: Implementation of domestic Ohio bid preference, Ohio Admin. Code 125:5-1-06. Domestic Ohio Bid preference with respect to supply and service contracts, other than construction contracts. A preference is awarded to an "Ohio bid" as long as the price does not exceed by more than 5% the lowest price submitted on a non-Ohio bid.

Preference is awarded to Ohio bids or bidders who are located in a border state, provided that the border state does not impose a greater

restriction than contained in the Ohio Revised Code, §125.09 and §125.11.

Preferences: Procedure for Application of preferences, Ohio Department of Administrative Services, General Services Division, Domestic & In-State Preferences, PUR-003 (rev. Nov. 1, 2006). List of preferences and order of application for specified bid situations.

OHIO RECIPROCAL PREFERENCE

Local Entities: Preference for public improvement contracts, Ohio Admin. Code 123:5-1-11(D). Preference to contractor having principal place of business in Ohio on a reciprocal basis.

Public Improvements: Preference to Ohio contractors, Ohio Rev. Code Ann. §153.012. Application of reciprocal preference in favor of contractors who have their principal place of business in Ohio, for construction, public improvement, including highway improvement, contracts.

OKLAHOMA

OKLAHOMA RESIDENT BIDDER PREFERENCE

Hospitals: Contracts-Bids-Notice-Preference, Okla. Stat. Ann. tit. 19, §788(c). When quality and prices equal, preference given construction contractors domiciled, having and maintaining offices in and being citizen taxpayers of Oklahoma.

Public Works: Oklahoma labor and materials in construction or repair of state institutions, Okla. Stat. Ann. tit. 61, §9. All contracts that expend state funds for construction or repair of state institutions shall require employment of Oklahoma labor if available and quality equal and price no higher than out-of-state labor.

Public Works: Preference for Oklahoma labor and materials in certain construction, Okla. Stat. Ann. tit. 61, §10. Construction or repair of institutions require employment of Oklahoma labor if available and quality equal and price no higher than out-of-state labor.

OKLAHOMA RECIPROCAL PREFERENCE

Public Works: Preference to Oklahoma domiciled contractors, Okla. Stat. Ann. tit. 61, §14. Application of reciprocal preference for contractors.

Purchasing: Bidding preferences-Reciprocity, Okla. Stat. Ann. tit. 74, §85.17A. Application of reciprocal preference.

OREGON

OREGON RESIDENT BIDDER PREFERENCE

Contract Preferences: Preference for Oregon Supplies and Services; Tie-Offers, Or. Admin. R. 125-246-0300. Award identical offers for architectural, engineering or land surveying services, or related services to services produced in Oregon.

Department of Energy: Basic Policy, Or. Admin. R. 330-120-0005. In award between equally qualified bidders, preference given to residents of Oregon and resident businesses which have their home office or headquarters in Oregon.

Highway and Bridge Projects: Tie Offers, Or. Admin. R. 731-005-0660. If no federal funds involved, preference for Offeror whose principal offices or headquarters are located in Oregon.

OREGON RECIPROCAL PREFERENCE

Construction Services: Evaluation and Award, Or. Admin. R. 125-249-0390(6)(a). Application of reciprocal preference.

Construction Services Model Rules: Offer Evaluation and Award, Or. Admin. R. 137-049-0390(6)(a). Application of reciprocal preference.

Contract Preferences: Reciprocal Preferences, Or. Admin. R. 125-246-0310. Application of reciprocal preference.

Highway and Bridge Projects: Offer Evaluation and Award, Or. Admin. R. 731-005-0650(4). Application of reciprocal preference.

Public Contracting Model Rules: Reciprocal Preferences, Or. Admin. R. 137-046-0310. Application of reciprocal preference.

Public Contracting: Preference for Oregon goods and services; nonresident bidders, Or. Rev. Stat. Ann. §279A.120. Application of reciprocal preference.

PENNSYLVANIA

PENNSYLVANIA RESIDENT BIDDER PREFERENCE

Allentown: Bidding Process, 339 Pa. Code §11.8-815. Resident businesses of Allentown receive 5% local preference, but not to exceed $2,500 in awarding bids.

PENNSYLVANIA RECIPROCAL PREFERENCE

Procurement: Reciprocal limitations, 62 Pa. Cons. Stat. Ann. §107. Application of reciprocal preference for certain contracts for construction or supplies.

RHODE ISLAND

RHODE ISLAND RESIDENT BIDDER PREFERENCE

Public Works: Selection of professionals with place of business located in Rhode Island, R.I. Gen. Laws §37-2-59.1 Preference for Rhode Island architectural, engineering, and consulting firms.

SOUTH CAROLINA

SOUTH CAROLINA RESIDENT BIDDER PREFERENCE

Contracts: Competitive sealed bidding, S.C. Code Ann. §11-35-1520(9). In tie bid for contract of $25,000 or more, preference for South Carolina firms.

Highway Public Works: Allocation of state source highway funds for construction and renovation projects to firms owned and controlled by disadvantaged ethnic minorities or women, S.C. Code Ann. §12-28-2930(F). Preference given to South Carolina contractor if bid not more than 2.5% of out-of-state bid.

Source Selection: Resident vendor preference, S.C. Code Ann. §11-35-1524. Residents of South Carolina receive 7% preference. Residents of South Carolina bidding South Carolina products receive additional 3% preference.

SOUTH DAKOTA

SOUTH DAKOTA RESIDENT BIDDER PREFERENCE

Forestry: Preference to native trees and South Dakota dealers, S.D. Codified Laws §41-20-10. Preference to tree seeds from South Dakota dealers.

Milk: Awarding of contract to licensed processor, S.D. Codified Laws §5-19-1.2. Preference given to a person who operates a South Dakota grade A milk plant where milk and milk products are collected, handled, processed, stored, pasteurized, and packaged if his bid is equal to, or within 5% or less, of any other bidder.

Motor Vehicles: Commodities purchased or leased by bureau-vehicles from licensed dealers, S.D. Codified Laws §5-23-2. Purchase,

leasing, hiring, or leasing-purchase of motor vehicles shall only be from authorized dealers licensed by the State of South Dakota.

Purchases and Printing: Award where identical low bids submitted, S.D. Codified Laws §5-23-12.2. Tie breaking preference given to South Dakota businesses or manufacturers.

Purchases and Printing: Preference to resident bidders, S.D. Codified Laws §5-23-13. Preference in tie bids to any person, firm, or corporation who has his or its principal place of business in the State of South.

SOUTH DAKOTA RECIPROCAL PREFERENCE

Public Property: Residential preference in contracts for public works, S.D. Codified Laws §5-19-3. Application of reciprocal preference.

Purchases and Printing: Preference for resident bidders, S.D. Codified Laws §5-23-21.2. Application of reciprocal preference.

TENNESSEE

TENNESSEE RESIDENT BIDDER PREFERENCE

Meat Products: Tennessee meat producers; purchasing preference, Tenn. Code Ann. §12-3-809. Preference given to producers located within Tennessee as long as terms, conditions and quality are equal.

Meat Products Purchased by Public Education Institutions: Purchasing preference, Tenn. Code Ann. §12-3-810. Preference given to producers located within Tennessee as long as terms, conditions and quality are equal.

Procurement: Award-tie bids, Tenn. Comp. R. & Regs. 0690-3-1-.08(5). In case of tie bid, first preference given to in-state business.

Public Contracts: Purchasing goods and procuring services; preference for Tennessee products, Tenn. Code Ann. §12-4-121. Preference given to Tennessee bidders if cost and quality are equal for purchases of goods, including agricultural products. Preference given to Tennessee bidders for procuring services if services meet state requirements, quality and cost.

TENNESSEE RECIPROCAL PREFERENCE

Public Contracts: Reciprocal preferences, Tenn. Code Ann. §12-4-802. Application of reciprocal preference for contractors bidding on public construction projects.

TEXAS

TEXAS RESIDENT BIDDER PREFERENCE

Lottery Commission: Lottery procurement procedures, 16 Tex. Admin. Code §401.101(e). In purchase or lease of services, preference given to Texas resident bidder or proposer if cost and quality equal.

Lottery Commission: Preference for Texas Businesses, Tex. Gov't Code §466.106. In contracts for lottery equipment, supplies, services, and advertising, preference given to services or advertising offered by bidders from Texas if cost and quality equal.

Procurement: Preferences, 1 Tex. Admin. Code §113.8. Texas bidders given preference when cost and quality of goods or services equal. Texas agricultural products offered by Texas bidder given preference if cost and quality is equal. Services offered by Texas bidder given preference if meet state requirements, quality is equal, and cost does not exceed nonresident bid of equal quality. (Nonmission-related procurements made by Texas National Research Laboratory Commission follow this rule, 1 Tex. Admin. Code §303.1.)

Procurement: Preference to Texas services, Tex. Gov't Code §2155.444. For goods, preference given to Texas Bidders if cost and quality are equal. For agricultural products, second preference given to Texas Bidders if cost and quality equal.

Professional and Consulting Services: Selection of consultant, Tex. Gov't Code §2254.027. If other considerations equal, preference given to consultant whose principal place of business is in Texas or who will manage the contract wholly from an office in Texas.

Travel Services: Contracts with providers of travel services, Tex. Gov't Code §2171.052. Contracts with travel agents, preference given to resident entities of Texas.

TEXAS RECIPROCAL PREFERENCE

Lottery Commission: Lottery procurement procedures, 16 Tex. Admin. Code §401.101(c)(2), (d)(4). Application of reciprocal preference in informal competitive solicitations and formal competitive solicitations.

Procurement: Award of contract to nonresident bidder, Tex. Gov't Code §2252.002. Application of reciprocal preference for all governmental entities and governmental contracts.

Procurement: Preferences, 1 Tex. Admin. Code §113.8. Application of reciprocal preference for nonresident bidder (nonmission-related procurements made by Texas National Research Laboratory Commission follow this rule, 1 Tex. Admin. Code §303.1).

UNITED STATES VIRGIN ISLANDS

UNITED STATES VIRGIN ISLANDS RESIDENT BIDDER PREFERENCE

Procurement and Sale: Preferred bidders, V.I. Code Ann. tit. 31, §236a. Preference for construction services, supplies, materials, equipment, and contractual or consulting services from "preferred bidder" where the total cost not more than 15% higher.

UTAH

UTAH RESIDENT BIDDER PREFERENCE

Procurement: Tie bids, Utah Admin. Code r. 33-3-113. Procedures which may be used to discourage tie bids include award to Utah resident bidder.

Vending Stands: Issuance of licenses-preference to blind persons, Utah Code Ann. §55-5-3. Preference to blind persons who are in need of employment and who have resided for at least one year in Utah.

UTAH RECIPROCAL PREFERENCE

Construction Contracts: Preference for resident contractors, Utah Code Ann. §63-56-405. Application of reciprocal preference.

VERMONT

VERMONT RESIDENT BIDDER PREFERENCE

Insurance: Preference to Vermont companies, agents, Vt. Stat. Ann. Tit. 29, §1402. Preference given to Vermont-domiciled companies and independent agents licensed in and resident in Vermont.

VIRGINIA

VIRGINIA RESIDENT BIDDER PREFERENCE

Local Government Procurement: Preference for local products and firms, Va. Code Ann. §2.2-4328. In case of tie bid, preference to goods, services and construction provided by persons, firms or corporations having principal places of business in locality.

Procurement: Preference for Virginia products and firms, 11 Va. Admin. Code §5-20-430(A). In case of tie bid, preference given to goods, services and construction provided by Virginia persons, firms or corporations.

Procurement: Preference for Virginia products with recycled content and for Virginia firms, Va. Code Ann. §2.2-4324(A). In case of tie bid, preference given to goods or services or construction provided by Virginia persons, firms or corporations.

VIRGINIA RECIPROCAL PREFERENCE

Procurement: Preference for Virginia products and firms, 11 Va. Admin. Code §5-20-430(B). Application of reciprocal preference.

Procurement: Preference for Virginia products with recycled content and for Virginia firms, Va. Code Ann. §2.2-4324(B). Application of reciprocal preference. If lowest bidder is resident contractor of state with an absolute preference, bid is not considered.

WASHINGTON

WASHINGTON RESIDENT BIDDER PREFERENCE

Procurement: Preferential purchase, Wash. Rev. Code Ann. §43.19.1911(7). In determining the lowest responsible bidder, the agency shall consider any preferences provided by law to Washington vendors and to §43.19.704 providing reciprocal preferences.

WASHINGTON RECIPROCAL PREFERENCE

Procurement: In-state preference bids, Wash. Admin. Code 236-48-085. Application of reciprocal preference.

Procurement: In-state preference clauses, Wash. Rev. Code Ann. §43.19.700. Requiring application of reciprocal preference.

Procurement: Rules for reciprocity in bidding, Wash. Rev. Code Ann. §43.19.704. Requiring adoption of rules concerning application of reciprocity.

WEST VIRGINIA

WEST VIRGINIA RESIDENT BIDDER PREFERENCE

Higher Education: Purchase or acquisition of materials, supplies, equipment, services and printing, W. Va. Code Ann. §18B-5-4(g). Resident vendor preferences as provided in W. Va. Code Ann. §5A-3-37 apply to competitive bids made pursuant to this section.

Local Educational Agencies: Resident Vendor Preference, W. Va. Code R. §126-202, Purchasing Policies & Procedures Manual for Local Educational Agencies, 17.

17.1. Preference for resident vendors in accordance with W. Va. Code Ann. §5A-3-37.

17.3. Local Educational Agencies (LEAs) may establish by local board policy procedures for granting preference to resident vendors for purchase of commodities and printing. Vendor preference cannot exceed 5% of lowest bid.

Preferences: Commodities and printing, W. Va. Code R. §110-12C-4.

4.1. 2.5% preference for resident vendor who has resided in West Virginia continuously for 4 years immediately preceding date of bid; 2.5% preference for partnership, association or corporation resident vendor which has maintained its headquarters or principal place of business within West Virginia continuously for 4 years immediately preceding bid.

4.3. 5% preference for vendor satisfying subsection 4.1, above, and certifying that on average at least 60% of the bidder's employees have been residents of West Virginia continuously for 2 years immediately preceding submission of bid.

Preferences: Construction Services, W.Va. Code R. §110-12C-3.

3.1. 2.5% preference for resident vendor who has resided in West Virginia continuously for 4 years immediately preceding date of bid; 2.5% preference for partnership, association or corporation resident vendor which has maintained its headquarters or principal place of business within West Virginia continuously for 4 years immediately preceding bid.

3.3. 5% preference for vendor satisfying subsection 3.1, above, and certifying that on average at least 60% of the employees working on project have been residents of West Virginia continuously for 2 years immediately preceding submission of bid.

Purchasing: Awards-vendor preference, W. Va. Code R. §148-1-6(6.4.4). Purchases of commodities and printing, with exception of construction services, subject to resident vendor preference in accordance with the rules promulgated by the Secretary of the Department of Tax and Revenue.

Purchasing: Preference for resident vendors, W. Va. Code Ann. §5A-3-37. For purchase of commodities or printing:

(1) 2.5% preference for resident vendor who has resided in West Virginia continuously for 4 years immediately preceding bid; 2.5% preference for partnership, association or corporation resident vendor which has maintained its headquarters or principal place of business within West Virginia continuously for 4 years immediately preceding bid; 2.5% preference for corporation nonresident vendor which has an affiliate or subsidiary which employs a minimum of 100 state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for 4 years immediately preceding the date of bid.

(2) 2.5% preference for resident vendor if on average at least 75% of employees working on project are residents of West Virginia who have resided in state continuously for 2 years immediately preceding bid.

(3) 2.5% preference for nonresident vendor which has an affiliate or subsidiary which maintains its headquarters or principle place of business within West Virginia and which employs a minimum of 100 state residents if on average at least 75% of employees working on project are residents of West Virginia who have resided in state continuously for 2 years immediately preceding bid.

(4) 5% preference for vendor meeting requirements of subsections (1) and (2) or (1) and (3).

(5) 3.5% preference for resident vendor who is veteran and resided in West Virginia continuously for the 4 years immediately preceding date of bid.

(6) 3.5% preference for resident vendor who is veteran if on average at least 75% of employees working on project are residents of West Virginia who have resided in state continuously for 2 years immediately preceding bid.

WEST VIRGINIA RECIPROCAL PREFERENCE

Purchasing: Awards-vendor preference, W. Va. Code R. §148-1-6(6.4.4). Application of reciprocal preference for purchases of commodities and printing made upon competitive bid.

Purchasing: Preference for resident vendors; reciprocal preference, W. Va. Code Ann. §5A-3-37a. Application of reciprocal preference for purchase of commodities or printing.

WISCONSIN

WISCONSIN RESIDENT BIDDER PREFERENCE

Art: Fine arts in state buildings, Wis. Stat. Ann. §44.57. Preference given to artists who are residents of Wisconsin.

Art Program: Application, Wis. Admin. Code AB §4.05. Preference given to Wisconsin artists.

Bidding: Basis for awards as a result of bidding, Wis. Admin. Code Adm §8.03(4). In case of tie bids, award shall be made to Wisconsin suppliers, in preference to out-of-state suppliers.

WISCONSIN RECIPROCAL PREFERENCE

Engineering: Construction project contracts, Wis. Stat. Ann. §16.855. Application of reciprocal preference.

Purchasing: Buy on low bid, exceptions, Wis. Stat. Ann. §16.75. Application of reciprocal preference.

WYOMING

WYOMING RESIDENT BIDDER PREFERENCE

Art: Role of the committee, Wyo. Code R. ch. 1, §4. Preference to Wyoming artists.

Art in Public Building: Department of commerce to acquire works of art, Wyo. Stat. Ann. §16-6-803. Preference to Wyoming artists.

Preferences: Printing preference, Wyo. Code R. ch. 6, §2. Preference to resident if bid is not more than 10% higher than lowest nonresident bid.

Public Printing: Preference for resident bidders, Wyo. Stat. Ann. §16-6-301. Preference for resident if bid is not more than 10% higher than lowest nonresident bid.

Public Works: Resident contractors; preference limitation with reference to lowest bid or qualified response, Wyo. Stat. Ann. §16-6-102. Preference for resident if bid is not more than 5% higher than that of lowest nonresident bid.

Purchasing: Preferential policy, Wyo. Code R. ch. 14, §6. Preference for Wyoming contractors if bid is not more than 5% higher than lowest nonresident bid.

Reciprocity and Resident Bidder Preference Chart

State	Resident Bidder Preference	Reciprocal Preference	Statutory Cites
Alabama	Yes	Yes	Code of Alabama, Title 23, Chapter 1, Article 2, Section 23-1-51 Code of Alabama, Title 39, Chapter 3, Section 39-3-5 Code of Alabama, Title 41, Chapter 16, Article 2, Sections 41-16-20, 41-16-27, 41-16-50, 41-16-57
Alaska	Yes	No	Alaska Statutes, Title 35, Chapter 27, Section 35.27.020 Alaska Statutes, Title 36, Chapter 30, Article 2, Section 36.30.170; Article 3, Section 36.30.250 2006 Session Laws of Alaska, Chapter 113, H.B. 257, Section 5, 24th Legislature, Second Session Alaska Administrative Code, Title 2, Section 12.260
American Samoa	Yes	No	American Samoa Code, Section 12.0210 American Samoa Administrative Code, Section 10.0272
Arizona	No	No	Not Applicable
Arkansas	Yes	No	West's Arkansas Code Annotated, Title 13, Chapter 8, Subchapter 2, Section 13-8-206 West's Arkansas Code Annotated, Title 19, Chapter 11, Subchapter 2, Section 19-11-259; Subchapter 3, Sections 19-11-304, 19-11-305, 19-11-306; Subchapter 8, Section 19-11-803
California	Yes	Yes	West's Annotated California Codes, Government Code, Title 1, Division 5, Chapter 4, Article 3, Section 4361; Chapter 10.5, Sections 4531, 4533, 4533.1, 4534, 4534.1, 4535.2; Division 7, Chapter 12.8, Section 7084; Chapter 12.97, Section 7118 West's Annotated California Codes, Government Code, Title 2, Division 3, Part 5.5, Chapter 6.5, Article 1, Sections 14837, 14838; Part 10B, Chapter 2.1, Section 15813.3

State	Resident Bidder Preference	Reciprocal Preference	Statutory Cites
(California continued)			West's Annotated California Codes, Public Contract Code, Division 2, Part 1, Chapter 6, Section 6107; Part 2, Chapter 3, Section 12102 California Code of Regulations, Title 2, Sections 1896.6, 1896.8, 1896.12, 1896.31, 1896.32, 1896.34, 1896.35, 1896.61, 1896.101, 1896.102, 1896.104, 1896.105
Colorado	Yes	Yes	West's Colorado Revised Statutes Annotated, Title 8, Article 18, Sections 8-18-101, 8-18-103; Article 19, Sections 8-19-101, 8-19-102.5 West's Colorado Revised Statutes Annotated, Title 24, Article 30, Part 14, Section 24-30-1403; Article 103, Part 2, Section 24-103-202.5 West's Colorado Revised Statutes Annotated, Title 43, Article 1, Part 14, Section 43-1-1406 Code of Colorado Regulations, 100 Department of Personnel and Administration, 101 Division of Finance and Procurement, 1 CCR 101-9 Procurement Rules, Article 111, R-24-111-102-02
Connecticut	Yes	No	General Statutes of Connecticut, Title 4A, Chapter 58, Section 4a-59
Delaware	Yes	No	Delaware Code Annotated, Title 29, Part VI, Chapter 69, Subchapter IV, Section 6962(d)(4)(b)
District of Columbia	Yes	No	District of Columbia Official Code, Division I, Title 2, Chapter 3, Unit A, Subchapter III, Section 2-303.01
Florida	Yes	Yes	West's Florida Statutes Annotated, Title XVIII, Chapter 255, Section 255.04 West's Florida Statutes Annotated, Title XIX, Chapter 283, Section 283.35; Chapter 287, Section 287.084, Chapter 288, Section 288.703 Florida Administrative Code Annotated, Rules 25-25.009(5), 25-25.025
Georgia	Yes	Yes	West's Code of Georgia Annotated, Title 8, Chapter 5, Section 8-5-5

State	Resident Bidder Preference	Reciprocal Preference	Statutory Cites
(Georgia continued)			West's Code of Georgia Annotated, Title 50, Chapter 5, Article 3, Part 1, Sections 50-5-60, 50-5-62
Guam	Yes	No	Guam Code Annotated, Title 1, Chapter 8, Article 2, Section 852 Guam Code Annotated, Title 5, Division 1, Chapter 5, Article 1, Part A, Section 5008 Administrative Rules & Regulations of the Government of Guam, Title 2, Section 1104
Hawaii	Yes	Yes	Hawaii Revised Statutes, Title 9, Chapter 103D, Part X, Sections 103D-1004, 103D-1006 Hawaii Revised Statutes, Title 13, Chapter 201, Part I, Section 201-4 Weil's Code of Hawaii Rules, Chapter 3-124, Subchapter 1, Section 3-124-5; Subchapter 2, Section 3-124-12; Subchapter 3, Sections 3-124-17, 3-124-18; Subchapter 4, Section 3-124-25; Subchapter 5, Sections 3-124-34, 3-124-35; Subchapter 7, Section 3-124-55; Subchapter 8, Section 3-124-64
Idaho	Yes	Yes	Idaho Code Annotated, Title 67, Chapter 23, Sections 67-2348, 67-2349; Chapter 57, Section 67-5718 Idaho Administrative Code, Rule 38.05.01.082
Illinois	Yes	Yes	West's Smith-Hurd Illinois Compiled Statutes Annotated, Chapter 30, Act 500, Article 45, Section 500/45-10; Act 520, Section 520/2 Illinois Administrative Code, Title 44, Subtitle A, Chapter I, Part 1, Section 1.4510 Illinois Administrative Code, Title 44, Subtitle B, Chapter I, Part 500, Section 500.1110
Indiana	Yes	No	West's Annotated Indiana Code, Title 4, Article 13.6, Chapter 6, Sections 4-13.6-6-2.5, 4-13.6-6-2.7 West's Annotated Indiana Code, Title 5, Article 22, Chapter 14, Section 5-22-14-1;

State	Resident Bidder Preference	Reciprocal Preference	Statutory Cites
(Indiana continued)			Chapter 15, Sections 5-22-15-20, 5-22-15-20.5, 5-22-15-23 Governor Mitchell E. Daniels, Jr., Indiana Executive Order No. 05-05 (Jan. 10, 2005)
Iowa	Yes	Yes	West's Iowa Code Annotated, Title I, Subtitle 4, Chapter 8A, Subchapter III, Part 2, Section 81.311; Subtitle 5, Chapter 15, Subchapter I, Section 15.102 West's Iowa Code Annotated, Title II, Subtitle 3, Chapter 73A, Section 73A.21 West's Iowa Code Annotated, Title VII, Subtitle 7, Chapter 304A, Division II, Section 304A.13 Iowa Administrative Code, Department of Administrative Services [11], Chapter 105, Rule 11—105.5(8A), 105.5(2) Iowa Administrative Code, Transportation [761], Chapter 20, Rule 761—20.4(307), 20.4(6)(b)
Kansas	Yes	Yes	Kansas Statutes Annotated, Chapter 75, Article 37, Sections 75-3740, 75-3740a
Kentucky	Yes	Yes	Baldwin's Kentucky Revised Statutes Annotated, Title VI, Chapter 45A, Section 54A.873
Louisiana	Yes	Yes	West's Louisiana Revised Statutes Annotated, Title 27, Chapter 5, Part VI, Section 246 West's Louisiana Revised Statutes Annotated, Title 38, Chapter 10, Part I, Section 2184; Part II, Section 2225; Part IV, Sections 2251, 2252, 2253, 2255, 2256 West's Louisiana Revised Statutes Annotated, Title 39, Chapter 17, Part III, Subpart B, Sections 1595, 1595.1, 1595.2, 1595.3, 1595.5; Part VIII, Section 1732 West's Louisiana Revised Statutes Annotated, Title 48, Chapter 1, Part XIII. Subpart B, Section 255.6

State	Resident Bidder Preference	Reciprocal Preference	Statutory Cites
(Louisiana continued)			Louisiana Administrative Code, Government Contracts, Procurement and Property Control, Title 34, Part I, Subpart 1, Chapter 5, Section 529(B)(1) Governor Kathleen Babineaux Blanco, Louisiana Executive Order No. KBB 2004-30 (Aug. 20, 2004)
Maine	Yes	Yes	Maine Revised Statutes Annotated, Title 5, Part 4, Chapter 155, Subchapter I-A, Section 1825-B Maine Revised Statutes Annotated, Title 26, Chapter 15, Section 1301
Maryland	Yes	Yes	West's Annotated Code of Maryland, State Finance and Procurement, Division II, Title 14, Subtitle 4, Section 14-401 West's Annotated Code of Maryland, Article 24, Title 8, Section 8-102 Code of Maryland Regulations 21.05.01.04
Massachusetts	No	No	Not Applicable
Michigan	Yes	Yes	Michigan Compiled Laws Annotated, Chapter 18, Article 2, Sections 18.1261, 18.1268; Chapter 45, Section 45.85
Minnesota	Yes	Yes	Minnesota Statutes Annotated, Administration and Finance, Chapter 16C, Sections 16C.06, 16C.16, 16C.28 Minnesota Rules 1230.0900, 1230.1830
Mississippi	Yes	Yes	West's Annotated Mississippi Code, Title 19, Chapter 13, Section 19-13-111 West's Annotated Mississippi Code, Title 31, Chapter 3, Section 31-3-21; Chapter 7, Sections 31-7-18, 31-7-47 West's Annotated Mississippi Code, Title 72, Chapter 13, Section 73-13-45
Missouri	Yes		Vernon's Annotated Missouri Statutes (West), Title IV, Chapter 34, Sections 34.070, 34.073, 34.076 Vernon's Annotated Missouri Statutes (West), Title VI, Chapter 50, Section 50.780

State	Resident Bidder Preference	Reciprocal Preference	Statutory Cites
(Missouri continued)			Missouri Code of State Regulations Annotated, Department of Higher Education, Title 6, Division 250, Chapter 3, Section 250-3.020(1)(D)
Montana	No	Yes	Montana Code Annotated, Title 18, Chapter 1, Part 1, Section 18-1-102; Chapter 7, Part 1, Section 18-7-107 Administrative Rules of Montana, Rule 2.5.408
Nebraska	Yes	Yes	Revised Statutes of Nebraska, Chapter 73, Article 1, Section 73-101.01 Revised Statutes of Nebraska, Chapter 81, Article 12, Section 81-1276 Revised Statutes of Nebraska, Chapter 82, Article 3, Section 82-323 Nebraska Administrative Code, Title 9, Chapter 4, Section 003 Nebraska Administrative Code, Title 192, Chapter 1, Section 005.05
Nevada	No	Yes	Nevada Revised Statutes, Title 27, Chapter 333, Section 333.336
New Hampshire	No	No	Not Applicable
New Jersey	No	Yes	New Jersey Statutes Annotated, Title 52, Subtitle 5, Chapter 32, Section 52:32-1.4 New Jersey Administrative Code, Section 17:12-2.13
New Mexico	Yes	No	New Mexico Statutes, Chapter 13, Article 1, Sections 13-1-21, 13-1-21.2, 13-1-22, 13-1-120; Article 4, Sections 13-4-1, 13-4-2 New Mexico Statutes, Chapter 63, Article 9F, Section 63-9F-6 Code of New Mexico Rules, Section 1.4.1.25
New York	Specific law penalizing nonresident bidders from certain states	Specific law penalizing nonresident bidders from certain states	McKinney's Consolidated Laws of New York Annotated (West), State Finance Law, Chapter 56, Article XI, Section 165(6) (eff. January 1, 2007)

State	Resident Bidder Preference	Reciprocal Preference	Statutory Cites
(New York continued)			Appendix A, Standard Clauses for New York State Contracts, 21. Reciprocity and Sanctions Provisions (June 2006)
North Carolina	Yes	Yes	West's North Carolina General Statutes Annotated, Chapter 143, Section 143-59
North Dakota	No	Yes	North Dakota Century Code, Title 44, Chapter 44-08, Section 44-08-01 North Dakota Administrative Code, Chapter 4-12-11, Section 4-12-11-02; Chapter 89-07-02, Section 89-07-02-26
Ohio	Yes	Yes	Baldwin's Ohio Revised Code Annotated, Title I, Chapter 125, Sections 125.09, 125.56, 153.012 Baldwin's Ohio Administrative Code 123:5-1-06, 123:-5-1-11 Ohio Department of Administrative Services, General Services Division, Domestic & In-State Preferences, PUR-003 (rev. Nov. 1, 2006)
Oklahoma	Yes	Yes	Oklahoma Statutes Annotated, Title 19, Chapter 17, Section 788(c) Oklahoma Statutes Annotated, Title 61, Sections 9, 10, 14 Oklahoma Statutes Annotated, Title 74, Chapter 4, Section 85.17A
Oregon	Yes	Yes	West's Oregon Revised Statutes Annotated, Title 26, Chapter 279A, Section 279A.120 Oregon Administrative Rules 125-246-0300, 125-246-0310, 125-249-0390, 137-046-0310, 137-049-0390, 330-120-0010, 731-005-0650, 731-005-0660
Pennsylvania	Yes	Yes	Purdon's Pennsylvania Consolidated Statutes Annotated, Title 62, Part I, Chapter 1, Section 107 Pennsylvania Code, Title 339, Part II, Chapter 11, Art. VIII, Section 11.8-815
Puerto Rico	No	No	Not Applicable
Rhode Island	Yes	No	General Laws of Rhode Island, Title 37, Chapter 2, Section 37-2-59.1

State	Resident Bidder Preference	Reciprocal Preference	Statutory Cites
South Carolina	Yes	No	Code of Laws of South Carolina, Title 11, Chapter 35, Article 5, Subarticle 3, Sections 11-35-1520, 11-35-1524 Code of Laws of South Carolina, Title 12, Chapter 28, Article 29, Section 12-28-2930
South Dakota	Yes	Yes	South Dakota Codified Laws, Title 5, Chapter 5-19, Sections 5-19-1.2, 5-19-3; Chapter 5-23, Sections 5-23-2, 5-23-12.2, 5-23-13, 5-23-21.2 South Dakota Codified Laws, Title 41, Chapter 41-20, Section 41-20-10.
Tennessee	Yes	Yes	West's Tennessee Code Annotated, Title 12, Chapter 3, Part 8, Sections 12-3-809, 12-3-810; Chapter 4, Part 1, Section 12-4-121; Part 8, Section 12-4-802 Official Compilation Rules & Regulations of the State of Tennessee, Department of General Services, Purchasing Division, Chapter 0690—3—1, Rule 0690—3—1—.08
Texas	Yes	Yes	Texas Government Code, Title 4, Subtitle E, Chapter 466, Subchapter C, Section 466.106 Texas Government Code, Title 10, Subtitle D, Chapter 2155, Subchapter H, Section 2155.444; Chapter 2171, Subchapter B, Section 2171.052; Subtitle F, Chapter 2252, Subchapter A, Section 2252.002; Chapter 2254, Subchapter B, Section 2254.027 Texas Administrative Code, Title 1, Part 5, Chapter 113, Subchapter A, Section 113.8; Part 14, Chapter 303, Section 303.1 Texas Administrative Code, Title 16, Part 9, Chapter 401, Subchapter A, Section 401.101
United States Virgin Islands	Yes	No	Virgin Islands Code Annotated, Title 31, Part II, Chapter 23, Section 236a
Utah	Yes	Yes	West's Utah Code Annotated, Title 55, Chapter 5, Section 55-5-3 West's Utah Code Annotated, Title 63, Chapter 56, Part 4, Section 63-56-405 Utah Administrative Code Rule 33-3-113

State	Resident Bidder Preference	Reciprocal Preference	Statutory Cites
Vermont	Yes	No	Vermont Statutes Annotated, Title 29, Part 2, Chapter 55, Section 1402
Virginia	Yes	Yes	West's Annotated Code of Virginia, Title 2.2, Subtitle II, Part B, Chapter 43, Article 2, Sections 2.2-4324, 2.2-4328 Virginia Administrative Code, Title 11, Section 5-10-430
Washington	Yes	Yes	Revised Code of Washington Annotated (West), Title 43, Chapter 43.19, Sections 43.19.700, 43.19.704, 43.19.1911(7) Washington Administrative Code, Title 236, Chapter 236-48, Section 236-48-085
West Virginia	Yes	Yes	West's Annotated Code of West Virginia, Chapter 5A, Article 3, Sections 5A-3-37, 5A-3-37a West's Annotated Code of West Virginia, Chapter 18B, Article 5, Section 18B-5-4(g) West Virginia Code of State Rules, Title 110, Series 12C, Sections110-12C-3, 110-12C-4 West Virginia Code of State Rules, Title 126, Series 202, Purchasing Policies & Procedures Manual for Local Educational Agencies, 17(17.1), (17.3) West Virginia Code of State Rules, Title 148, Series 1, Section 148-1-6(6.4.4)
Wisconsin	Yes	Yes	West's Wisconsin Statutes Annotated, Chapter 16, Subchapter IV, Section 16.75; Subchapter V, Section 16.855 West's Wisconsin Statutes Annotated, Chapter 44, Subchapter III, Section 44.57 Wisconsin Administrative Code, Arts Board, Chapter 4, Section 4.05 Wisconsin Administrative Code, Department of Administration, Chapter 8, Section 8.03(4)
Wyoming	Yes	No	Wyoming Statutes Annotated, Title 16, Chapter 6, Article 1, Section 16-6-102; Article 3, Section 16-6-301; Article 8, Section 16-6-803

State	Resident Bidder Preference	Reciprocal Preference	Statutory Cites
(Wyoming continued)			Weil's Code of Wyoming Rules, Chapter 1, Section 4; Chapter 6, Section 2; Chapter 14, Section 6

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General Counsel
Texas Building and Procurement Commission
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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of February 2, 2007, through February 8, 2007. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on February 14, 2007. The public comment period for these projects will close at 5:00 p.m. on March 16, 2007.

FEDERAL AGENCY ACTIONS:

Applicant: Corpus Development, LP; Location: The project is located in wetlands adjacent to Redfish Bay, at the intersection of Farm-to-Market Road (FM) 1069 and FM 2725, approximately 3 miles southeast of Ingleside, San Patricio County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 678500; Northing: 3081000. Project Description: The applicant proposes to develop a full service marina which would be located on an approximate 572-acre site adjacent to Redfish Bay and near the intersection of the Gulf Intracoastal Waterway (GIWW) and the Corpus Christi Ship Channel. In addition to the full service marina with docks, launch ramps, dry stack storage, and a boat repair facility, the applicant also proposes to construct a restaurant, bar, hotel, and housing on the site. Approximately one million cubic yards of material would be hydraulically dredged/mechanically excavated to construct the 51-acre marina and two entrance channels. The dredged/excavated material would be placed in a confined disposal area on-site for use in on-site construction. The northern entrance channel would be 1,716 feet in length and the southern entrance channel would be 1,885 feet in length. The depths of the marina and entrance channels would slope from -6 feet mean low tide (MLT) at the basin to -8 feet MLT at the entrance channels' intersection with the GIWW. Various types of bulkhead structures would be installed in the marina area and articulated block or concrete rubble revetment would be installed along the length of the entrance channels. The overall width of the channels, including the shoreline protection, would be approximately 150 feet with an approximate bottom width of 100 feet. The marina area would include 312 floating slips with double-loading floating docks that would accommodate vessel lengths from 25 to 50 feet. An additional 31 dedicated slips for vessels 40 to 50 feet in length would be set up for a charter/events area of the marina. The dock layout in the marina would vary depending on the mix of slip sizes. Typical widths for the central walkways of the slip areas would vary between 8 to 12 feet while finger piers would be between 2 and 4 feet in width. The length of the boat slips and finger piers would vary between 25 to 50 feet, and the clear width of each slip would vary between 12 and 22 feet. Direct project impacts include the filling of 13 acres of wetlands as well as dredging/excavation through 38 acres of wetlands to create the marina and entrance channels. Wetland areas to be impacted by fill or excavation include sand flats, low marsh dominated by Spartina alterniflora and Avicennia germinans, and mid- and high marsh areas containing a variety of halophytes. CCC Project No.: 07-0102-F1; Type of Application: U.S.A.C.E. permit application #24308 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Texas Commission on Environmental Quality under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Davis Petroleum Corporation; Location: The project is located within Sabine Lake, State Tract (ST) 16, approximately 3 miles east by northeast of Port Arthur, in Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: West of Greens Bayou, Texas-Louisiana. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 417161; Northing: 3310170. Project Description: The applicant proposes to drill ST 16 Well No. 1 and install, operate and maintain structures and equipment necessary for oil and gas drilling, production and transportation activities. Such activities include installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. CCC Project No.: 07-0103-F1; Type of Application: U.S.A.C.E. permit application #24396 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: Davis Gulf Coast, Inc.; Location: The project is located in San Antonio Bay, State Tracts (ST's) 125, 139, 140, 148, 147, and 146, in Calhoun County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Panther Point, Texas, Texas. All locations in approximate UTM Coordinates in NAD 27 (meters) are as follows: Access route begins at Zone 14; Easting: 725038.8; Northing: 3131353.2. Proposed ST 146 Well No. 1 Surface Location -Zone 14; Easting: 727113.3; Northing: 3126498.5. Project Description: The applicant proposes to mechanically dredge an access channel and basin to the proposed ST 146, Well No. 1 location. The applicant then proposes to install, operate and maintain structures and equipment necessary for oil and gas drilling and production, including a marine barge

rig, a 70- by 70-foot production platform, 7- by 30-foot well protector, well pad and flowline. Specifically, the applicant proposes to mechanically dredge an access channel to minus 8 feet mean lower low water (MLLW). The access channel would measure approximately 17,250 feet long by 80 feet wide. A well basin would also be dredged to minus 8 feet MLLW and measure approximately 435 feet long by 260 feet wide. The access channel and well basin would result in the excavation of approximately 102,159 cubic yards of silt, sand and clay. The excavated material would be hauled in barges to a designated (temporary) upland dredge material placement area (DMPA). The material would be offloaded into dump trucks and placed in the DMPA for drying. After drying the material would be transported to the permanent upland placement area via dump truck. The access channel, basin and well would involve portions of ST 139, ST 140, ST 148, ST 147 and ST 146. After the access channel and well basin dredging are complete, the applicant proposes to install and maintain a marine barge rig to ST 146, Well No. 1 to install structures. The applicant would install a 6-inch diameter flowline pipeline approximately 150 feet in length, between Well No. 1 and the production platform. The proposed flowline would be jetted or trenched a minimum depth of 3 feet below the bay bottom and result in approximately 33 cubic yards of sand, silt and clay being displaced. The trench is expected to fill in naturally. Approximately 2,667 cubic yards of shell, crushed rock or washed gravel would be used as a base for the proposed drilling rig and production facility. CCC Project No.: 07-0107-F1; Type of Application: U.S.A.C.E. permit application #SWG-2007-33-RS is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344). Note: The consistency review for this project may be conducted by the Railroad Commission of Texas under §401 of the Clean Water Act (33 U.S.C.A. §1344).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Tammy Brooks, Consistency Review Coordinator, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200700474
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: February 14, 2007

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Comptroller of Public Accounts

Certification of the Average Taxable Price of Gas and Oil

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined that the average taxable price of crude oil for reporting period January 2007, as required by Tax Code, §202.058, is $53.12 per barrel for the three-month period beginning on October 1, 2006, and ending December 31, 2006. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of January 2007, from a qualified Low-Producing Oil Lease, is not eligible for exemption from the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined that the average taxable price of gas for reporting period January 2007, as required by Tax Code, §201.059, is $6.29 per mcf for the three-month period beginning on October 1, 2006, and ending December 31, 2006. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of January 2007, from a qualified Low-Producing Well, is not eligible for exemption from the natural gas production tax imposed by Tax Code, Chapter 201.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-200700369
Martin Cherry
General Counsel
Comptroller of Public Accounts
Filed: February 9, 2007

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/19/07 - 02/25/07 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/19/07 - 02/25/07 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200700437
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: February 13, 2007

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Credit Union Department

Application to Amend Articles of Incorporation

Notice is given that the following application has been filed with the Credit Union Department and is under consideration:

An application for a name change was received from Kraft America Credit Union, Garland, Texas. The credit union is proposing to change its name to America's Credit Union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200700476
Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 14, 2007

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Applications to Expand Field of Membership

Notice is given that the following applications have been filed with the Credit Union Department and are under consideration:

An application was received from Texas Dow Employees Credit Union (#1), Lake Jackson, Texas to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in and businesses and other legal entities located in zip code 78941 within Fayette County, Texas, to be eligible for membership in the credit union.

An application was received from Texas Dow Employees Credit Union (#2), Lake Jackson, Texas to expand its field of membership. The proposal would permit persons who live, work, worship or attend school in and businesses and other legal entities located in zip code 78956, to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236 or downloading the form at http://www.tcud.state.tx.us/applications.html. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200700475
Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 14, 2007

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Credit Union Department provides notice of the final action taken on the following applications:

Applications to Expand Field of Membership - Approved

Community Resource Credit Union, Baytown, Texas - See *Texas Register* issue dated May 26, 2006.

Firstmark Credit Union, San Antonio, Texas - See *Texas Register* issue dated November 24, 2006.

Metro Medical Credit Union, Dallas, Texas - See *Texas Register* issue dated November 24, 2006.

Sid Richardson Employees State Credit Union, Odessa, Texas - See *Texas Register* issue dated December 29, 2006.

Applications for a Merger or Consolidation - Approved

PIA MidAmerica Credit Union (Dallas) and Corner Stone Credit Union (Lancaster) - See *Texas Register* issue dated November 24, 2006.

TRD-200700477
Harold E. Feeney
Commissioner
Credit Union Department
Filed: February 14, 2007

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Texas Education Agency

Request for Applications Concerning the 2007-2008 English Literacy and Civics Education Grant Program

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-07-101 from eligible applicants to provide literacy services and civic awareness to immigrant adults and limited English proficient adults in Texas. Eligible applicants include local educational agencies (LEAs); community-based organizations of demonstrated effectiveness; volunteer literacy organizations of demonstrated effectiveness; institutions of higher education; public or private nonprofit agencies; libraries; public housing authorities; nonprofit institutions that have the ability to provide literacy services to adults and families; or a consortium of eligible agencies, organizations, institutions, libraries, or authorities. For-profit entities are not eligible providers.

Description. The purpose of this program is to assist immigrants and other limited English proficient persons to effectively participate in the education, work, and civic opportunities of this country by assisting adults to become literate and obtain the knowledge and skills necessary for employment and self-sufficiency; assisting adults who are parents to obtain the educational skills necessary to become full partners in the educational development of their children; and assisting adults in the completion of a secondary school education.

Dates of Project. The English Literacy and Civics Education Program will be implemented during the 2007-2008 school year. Applicants should plan for a starting date of no earlier than July 1, 2007, and an ending date of no later than June 30, 2008.

Project Amount. Funding will be provided for approximately 43 projects. Each eligible organization can apply for only one project for a maximum of $102,000 for the 2007-2008 school year. An eligible organization can also participate as a sub-recipient of an eligible organization applying for this grant. This project is funded 100 percent from Adult Education federal funds.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-07-101 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA Grant Opportunities webpage at http://burleson.tea.state.tx.us/GrantOpportunities/forms. In the "Select Search Options" box, select the name of the program/RFA from the

drop-down list. Scroll down to "Application and Support Information" to view and download all documents that pertain to this RFA.

Training Available on Texas Education Telecommunication Network (TETN). TEA is offering training via TETN (TETN Event #24561) on Thursday, March 1, 2007, from 1:00 p.m. to 4:00 p.m. This training will cover the English Literacy and Civics Education grant application and will provide the opportunity for questions and answers. As space is limited, individuals planning to attend the event must reserve seating with their regional education service center.

Further Information. For clarifying information about the RFA, contact Carlos Garza, Division of Discretionary Grants, Texas Education Agency, (512) 463-9269. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any information that is different from or in addition to information provided in the RFA will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on the TEA website in the format of Frequently Asked Questions (FAQ) at http://burleson.tea.state.tx.us/GrantOpportunities/forms.

Deadline for Receipt of Applications. Applications must be certified and submitted through the eGrants online application system to the TEA by 5:00 p.m. (Central Time), Thursday, April 12, 2007, to be considered for funding.

TRD-200700481
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: February 14, 2007

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 26, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 26, 2007**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the AOs shall be submitted to the commission in **writing**.

(1) COMPANY: Air Liquide Large Industries U.S. LP; DOCKET NUMBER: 2006-1908-AIR-E; IDENTIFIER: Regulated Entity Reference Number (RN) RN100233998; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing plant; RULE VIOLATED: 30 Texas Administrative Code (TAC) §116.615(2) and §116.617(b)(1)(F), Air Permit Number 75225, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and (b)(2)(H) and THSC, §382.085(b), by failing to report emissions events within 24 hours and include the total quantity of emissions released; PENALTY: $38,073; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77020-1486, (713) 767-3500.

(2) COMPANY: City of Aledo; DOCKET NUMBER: 2006-1594-MLM-E; IDENTIFIER: RN101283075 and RN101720738; LOCATION: Aledo, Parker County, Texas; TYPE OF FACILITY: public water supply and wastewater treatment; RULE VIOLATED: 30 TAC §290.46(f)(2), (m)(1)(B), and (n)(3), by failing to provide the public water system's operating records for review, by failing to annually inspect all pressure tanks, and by failing to maintain a copy of the well completion data on file; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement covering land; 30 TAC §290.44(h)(4), by failing to have the backflow prevention assembly tested upon installation; 30 TAC §290.45(b)(1)(D)(i), (iv), and (v), and THSC, §341.0315(c), by failing to provide two or more wells with a total capacity of 0.6 gallons per minute (gpm) per connection, by failing to provide an elevated storage capacity of 100 gallons per connection or a pressure tank capacity of 20 gallons per connection, and by failing to provide emergency power for a system that serves more than 250 connections and does not meet the elevated storage requirements; 30 TAC §290.121(a), by failing to maintain an up-to-date chemical and microbiological monitoring plan; 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit Number 10681-002, Final Effluent Limitations and Monitoring Requirements, Sludge Provisions, and the Code, §26.121(a), by failing to comply with the permitted effluent limitations and by failing to submit the annual sludge report; PENALTY: $9,930; Supplemental Environmental Project (SEP) offset amount of $7,944 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Anita Keese, (956) 425-6010; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: Asmaou B. Malone dba AM Cleaners; DOCKET NUMBER: 2006-1152-DCL-E; IDENTIFIER: RN103955282; LOCATION: Lancaster, Dallas County, Texas; TYPE OF FACILITY: dry cleaner drop station; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration; PENALTY: $889; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: ASA Management, Inc. dba ASA Brownsville; DOCKET NUMBER: 2006-2034-PST-E; IDENTIFIER: RN102373586; LOCATION: Brownsville, Cameron County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Jason Godeaux, (512)

239-2541; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: Benedum Gas Partners, LP and Upton Gas GP, Inc. dba Wilshire Treating Facility; DOCKET NUMBER: 2006-1632-AIR-E; IDENTIFIER: RN100211846; LOCATION: Upton County, Texas; TYPE OF FACILITY: compressor stations; RULE VIOLATED: 30 TAC §101.201(a) - (c) and THSC, §382.085(b), by failing to timely complete and submit accurate initial and/or final reports; and 30 TAC §116.110(a)(4) and THSC, §382.085(b), by failing to prevent unauthorized emissions from entering the atmosphere; PENALTY: $41,726; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

(6) COMPANY: BK Services Inc. dba US 59 Fuel Mart; DOCKET NUMBER: 2006-1367-PST-E; IDENTIFIER: RN102356409; LOCATION: Rosenberg, Fort Bend County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §334.49(c)(2)(C) and (c)(4) and the Code, §26.3475(d), by failing to inspect and test the impressed current and the cathodic protection system for operability and adequacy of protection; 30 TAC §334.50(b)(2)(A)(i)(III) and (d)(1)(B)(ii) and the Code, §26.3475(a) and (c)(1), by failing to test the line leak detectors and by failing to conduct reconciliation of detailed inventory control records; 30 TAC §334.10(b), by failing to maintain underground storage tank (UST) records and make them immediately available for inspection; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II vapor recovery system (VRS) in proper operating condition and free of defects; PENALTY: $7,315; ENFORCEMENT COORDINATOR: Deana Holland, (512) 239-2504; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: City of Buda and Guadalupe-Blanco River Authority; DOCKET NUMBER: 2006-1738-MWD-E; IDENTIFIER: RN101703288; LOCATION: Hays County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: 30 TAC §305.125(1), (4), and (5), TPDES Permit Number WQ0011060001 Permit Conditions Number 2(g), and the Code, §26.121(a)(1), by failing to prevent the unauthorized discharge of untreated wastewater; PENALTY: $3,630; Supplemental Environmental Project (SEP) offset amount of $2,904 applied to The Hill Country Conservancy-Wentzel Tract Project; ENFORCEMENT COORDINATOR: Pamela Campbell, (512) 239-4493; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(8) COMPANY: Chapel Hill Independent School District; DOCKET NUMBER: 2006-1956-MWD-E; IDENTIFIER: RN101521557; LOCATION: Titus County, Texas; TYPE OF FACILITY: wastewater system; RULE VIOLATED: 30 TAC §305.125(1) and (17), TPDES Permit Number 13821001, Interim Effluent Limitations and Monitoring Requirements Number 1 for Outfall 001A, Sludge Provisions, and the Code, §26.121(a), by failing to comply with the permitted effluent limits, by failing to submit the discharge monitoring report (DMR) for the monitoring period ending October 31, 2005, and the annual sludge report for the monitoring period of July 31, 2005, and by failing to submit the flow daily maximum data on the DMR; PENALTY: $9,240; Supplemental Environmental Project (SEP) offset amount of $7,392 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Cari-Michel LaCaille, (512) 239-1387; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(9) COMPANY: City of Cockrell Hill; DOCKET NUMBER: 2006-1771-PWS-E; IDENTIFIER: RN101185320; LOCATION: Cockrell Hill, Dallas County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(h)(4) and THSC, §341.0315(c), by failing to have backflow prevention assemblies tested and certified; 30 TAC §290.121(a), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan; and 30 TAC §290.46(f)(3)(E)(iv), by failing to maintain documentation of customer service inspection reports; PENALTY: $2,203; Supplemental Environmental Project (SEP) offset amount of $1,762 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 490-3096; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: ConocoPhillips Company; DOCKET NUMBER: 2005-1212-AIR-E; IDENTIFIER: RN101619179; LOCATION: near Old Ocean, Brazoria County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §101.201(a)(1), (a)(1)(B), and (c), and §101.211(a) and THSC, §382.085(b), by failing to report an emission event, by failing to submit initial notification within 24 hours after the discovery of an emissions event, and by failing to submit a final report within two weeks after the end of an emissions event; and 30 TAC §101.20(3) and §116.115(c), Air Permit Number 5682A/PSD-TX-103M2 Special Condition (SC) Number 1, and THSC, §382.085(b), by failing to control unauthorized emissions; PENALTY: $25,662; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: City of Coolidge; DOCKET NUMBER: 2006-1878-MWD-E; IDENTIFIER: RN101919025; LOCATION: Coolidge, Limestone County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.65 and the Code, §26.121(a)(1), by failing to submit an application to renew a wastewater permit and continuing to discharge without authorization; and 30 TAC §305.125(1), TPDES Permit Number 10496001 Final Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with TPDES Permit Number 10496001 daily average biochemical oxygen demand (BOD) permitted effluent; PENALTY: $9,680; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Cross-Cut Hardwoods, Inc.; DOCKET NUMBER: 2006-1780-AIR-E; IDENTIFIER: RN101953206; LOCATION: Alto, Cherokee County, Texas; TYPE OF FACILITY: sawmill; RULE VIOLATED: 30 TAC §116.770 and THSC, §382.085(b), by failing to apply for and obtain a new source review (NSR) permit; 30 TAC §111.201 and THSC, §382.085(b), by failing to prohibit the outdoor burning of materials; and 30 TAC §101.4 and THSC, §382.085(a) and (b), by failing to prevent a nuisance condition; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Jason Kemp, (512) 239-5610; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(13) COMPANY: Dialville Oakland Water Supply Corporation; DOCKET NUMBER: 2006-1978-PWS-E; IDENTIFIER: RN101441285; LOCATION: Cherokee County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(i) and (ii) and THSC, §341.0315(c), by failing to meet the minimum well capacity requirement of 0.6 gpm per connection and by failing to provide a total storage capacity of 200 gallons per connection; and 30 TAC §290.43(c)(8), by failing to maintain the storage tanks in strict accordance with current American Water

Works Association Standards; PENALTY: $1,103; ENFORCEMENT COORDINATOR: Epifanio Villareal, (210) 490-3096; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(14) COMPANY: Thomas N. Thomas and Kyung A.E. Thomas dba East Lake Cleaners and dba East Gate Cleaners; DOCKET NUMBER: 2006-1451-DCL-E; IDENTIFIER: RN103992244 and RN103992251; LOCATION: Killeen, Bell County, Texas; TYPE OF FACILITY: dry cleaning drop stations; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facilities' registration by completing and submitting the required registration form; PENALTY: $2,370; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(15) COMPANY: Eastman Chemical Company; DOCKET NUMBER: 2006-1923-AIR-E; IDENTIFIER: RN100219815; LOCATION: Longview, Harrison County, Texas; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §101.201(a)(1) and (a)(2)(F) and §122.143(4), Federal Operating Permit (FOP) Numbers 1973 and 1979, Special Terms and Conditions 2F, and THSC, §382.085(b), by failing to properly notify the agency within 24 hours of the discovery of a reportable emissions event and by properly notifying the agency of all reportable pollutants in the initial notification of an emissions event; and 30 TAC §116.115(c) and §122.143(4), Air Permit Numbers 908 and 8539, Special Provision 1, Special Condition 1, FOP Numbers 1973 and 1978, Special Terms and Conditions 10, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $15,708; Supplemental Environmental Project (SEP) offset amount of $6,283 applied to Gregg County-Purchase of Alternative Fueled Equipment; ENFORCEMENT COORDINATOR: John Barry, (409) 898-3838; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(16) COMPANY: Juan Martin Villarreal dba El Chore Pit, Inc; DOCKET NUMBER: 2006-1747-MSW-E; IDENTIFIER: RN100842251; LOCATION: Mission, Hidalgo County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste disposal site; RULE VIOLATED: 30 TAC §330.15(a), by failing to prevent the disposal of municipal solid waste (MSW); PENALTY: $6,500; ENFORCEMENT COORDINATOR: Sandy Van Cleave (512) 239-0667; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(17) COMPANY: Fas Mart Inc.; DOCKET NUMBER: 2006-1909-PST-E; IDENTIFIER: RN101784411; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,040; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Flex Tank Systems, LLC; DOCKET NUMBER: 2005-1791-AIR-E; IDENTIFIER: RN100542489; LOCATION: Channelview, Harris County, Texas; TYPE OF FACILITY: storage and terminal facility for petroleum products; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(1), FOP Number 02390, Compliance Certification Terms and Conditions, and THSC, §382.085(b), by failing to submit annual compliance certification; PENALTY: $2,550; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3838; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: George West ISD; DOCKET NUMBER: 2007-0163-PST-E; IDENTIFIER: RN101766160; LOCATION: George West, Live Oak County, Texas; TYPE OF FACILITY: school district with fuel tanks; RULE VIOLATED: 30 TAC §334.49(a)(1), by failing to provide corrosion protection; and 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(20) COMPANY: City of Goree; DOCKET NUMBER: 2005-0441-MWD-E; IDENTIFIER: RN102187150; LOCATION: Goree, Knox County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0010102001, Effluent Limitations and Monitoring Requirements Number 1, and the Code, §26.121(a), by failing to comply with permitted effluent limits; PENALTY: $2,320; Supplemental Environmental Project (SEP) offset amount of $1,856 applied to Waste Collection Day; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(21) COMPANY: Haldor Topsoe, Inc.; DOCKET NUMBER: 2006-1841-AIR-E; IDENTIFIER: RN101211498; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: catalyst manufacturing plant; RULE VIOLATED: 30 TAC §106.6(b) and THSC, §382.085(b), by failing to seal two open-ended lines; 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), FOP O-01217, SC 12, NSR Permit Number 43752, SC 8, and THSC, §382.085(b), by failing to consistently maintain the pH level; and 30 TAC §122.143(4) and §122.145(2)(A) and FOP O-01217, General Terms and Conditions, and THSC, §382.085(b), by failing to include an emissions event in the semiannual deviation report; PENALTY: $8,816; Supplemental Environmental Project (SEP) offset amount of $3,526 applied to Harris County Public Health and Environmental Services - Pollution Control Division's Fourier Transform Infra Red (FTIR) Project; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Dechard A. Hulcy; DOCKET NUMBER: 2006-2106-LII-E; IDENTIFIER: RN105348587; LOCATION: Richardson, Dallas County, Texas; TYPE OF FACILITY: lawn and sprinkler service; RULE VIOLATED: 30 TAC §344.70 and Texas Occupations Code §1903.251, by failing to comply with the City of Richardson's landscape irrigation inspection requirements, ordinances, or regulations designed to protect the public water supply; PENALTY: $200; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: Larry E. Hutton; DOCKET NUMBER: 2006-1955-LII-E; IDENTIFIER: RN105001903; LOCATION: Houston and League City; Harris and Galveston Counties, Texas; TYPE OF FACILITY: landscape business; RULE VIOLATED: 30 TAC §30.5(a) and (b) and §344.4, Texas Occupations Code §1903.251, and the Code, §37.003, by failing to possess a valid irrigator license; PENALTY: $625; ENFORCEMENT COORDINATOR: Libby Hogue, (512) 239-1165; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Jong Oh dba J.C. Phillips; DOCKET NUMBER: 2006-1906-PST-E; IDENTIFIER: RN102369261; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,050; ENFORCEMENT COORDINATOR: Patricia Chawla, (512) 239-0739; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: Simon Stephen dba KK Food Store; DOCKET NUMBER: 2006-1651-PST-E; IDENTIFIER: RN101930873; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a) and the Code, §26.3475(d), by failing to provide proper corrosion protection for the UST system; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Jason Godeaux, (512) 239-2541; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: L B Foster Company; DOCKET NUMBER: 2007-0162-WQ-E; IDENTIFIER: RN102775780; LOCATION: Hillsboro, Hill County, Texas; TYPE OF FACILITY: concrete plant; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a multi-sector general permit; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(27) COMPANY: Maverick County; DOCKET NUMBER: 2006-1812-MSW-E; IDENTIFIER: RN102459690; LOCATION: Eagle Pass, Maverick County, Texas; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to dispose of MSW at an authorized facility; PENALTY: $2,040; ENFORCEMENT COORDINATOR: Alison Echlin, (512) 239-3308; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(28) COMPANY: Mercer Construction Company; DOCKET NUMBER: 2006-1848-WQ-E; IDENTIFIER: RN105061360; LOCATION: Surfside Beach, Brazoria County, Texas; TYPE OF FACILITY: drainage construction site installing vacuum sewer lines; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(c), by failing to obtain authorization to discharge storm water associated with construction activities; PENALTY: $1,800; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: Monarch Utilities I L.P.; DOCKET NUMBER: 2006-1935-MWD-E; IDENTIFIER: RN102286259; LOCATION: Trinity County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number WQ0013547001, Effluent Limitations and Monitoring Requirements Nos. 1 and 6, and the Code, §26.121(a), by failing to comply with permitted limits for total suspended solids and dissolved oxygen; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(30) COMPANY: City of Oglesby; DOCKET NUMBER: 2006-1836-MWD-E; IDENTIFIER: RN101918704; LOCATION: Oglesby, Coryell County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (17), TPDES Permit Number 10914001, Effluent Limitations and Monitoring Requirements No. 1, Sludge Provisions, and the Code, §26.121(a), by failing to comply with permit effluent limitations and by failing to submit the annual sludge report; PENALTY: $13,350; ENFORCEMENT COORDINATOR: Laurie Eaves, (512) 239-4495; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(31) COMPANY: City of Pflugerville; DOCKET NUMBER: 2006-2000-MWD-E; IDENTIFIER: RN100878602; LOCATION: Pflugerville, Travis County, Texas; TYPE OF FACILITY: water reclamation plant; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 13019001, Interim I Effluent Limitations and Monitoring Requirement Number 1, Monitoring and Reporting Requirements, and the Code, §26.121(a), by failing to comply with the permitted effluent limits and by failing to submit the DMR parameter data; PENALTY: $10,350; Supplemental Environmental Project (SEP) offset amount of $8,280 applied to Lower Colorado River Authority's Household Hazardous Waste and Reusable Materials Collection; ENFORCEMENT COORDINATOR: Samuel Short, (512) 239-5363; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 7758-5336, (512) 339-2929.

(32) COMPANY: Polynesian, Inc. dba Image Cleaners; DOCKET NUMBER: 2006-1374-DCL-E; IDENTIFIER: RN100863091; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: dry cleaner; RULE VIOLATED: 30 TAC §337.11(e) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form; PENALTY: $1,185; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(33) COMPANY: Port of Houston Authority; DOCKET NUMBER: 2007-0167-PST-E; IDENTIFIER: RN102049087; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(34) COMPANY: Presidio ISD; DOCKET NUMBER: 2007-0164-PST-E; IDENTIFIER: RN101815017; LOCATION: Presidio, Presidio County, Texas; TYPE OF FACILITY: school district with fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(35) COMPANY: Premier Golf Management Inc. dba Lakeridge Country Club; DOCKET NUMBER: 2007-0166-PST-E; IDENTIFIER: RN101728343; LOCATION: Lubbock, Lubbock County, Texas; TYPE OF FACILITY: country club with fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i), by failing to possess a valid TCEQ delivery certificate prior to receiving fuel; PENALTY: $875; ENFORCEMENT COORDINATOR: Melissa Keller, (512) 239-1768; REGIONAL OFFICE: 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

(36) COMPANY: Protex - Care, L.P. dba Wall Street Cleaners and Saint James Cleaners; DOCKET NUMBER: 2006-1423-DCL-E; IDENTIFIER: RN104098561 and RN105002836; LOCATION: Frisco and Plano, Collin County, Texas; TYPE OF FACILITY: dry cleaning and/or dry cleaning drop stations; RULE VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form for the facilities; and 30 TAC §337.14(c) and the Code, §5.702, by failing to pay dry cleaner fees; PENALTY: $1,070; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(37) COMPANY: City of Rising Star; DOCKET NUMBER: 2003-0383-PWS-E; IDENTIFIER: RN101205573 and Public Water Supply Facility Identification Number 0670005; LOCATION: Rising Star, Eastland County, Texas; TYPE OF FACILITY: public drinking water system; RULE VIOLATED: 30 TAC §290.44(h)(1)(A), by failing to have additional protection at the meter; 30 TAC §290.46(h), by failing to keep a supply of calcium hypochlorite disinfection on hand; and 30 TAC §290.41(c)(3)(J), by failing to repair cracked seal-

ing blocks; PENALTY: $2,925; Supplemental Environmental Project (SEP) offset amount of $2,340 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Plugging Abandoned Water Wells; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(38) COMPANY: Don French dba Riviera Mobile Home Park; DOCKET NUMBER: 2006-1882-PWS-E; IDENTIFIER: RN101256667; LOCATION: Denton, Denton County, Texas; TYPE OF FACILITY: mobile home park with public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(B)(i) and THSC, §341.0315(c), by failing to provide a minimum well capacity of 0.6 gpm per connection; 30 TAC §290.44(d), by failing to design, maintain, and operate the water system to provide a minimum pressure of 35 pounds per square inch; 30 TAC §290.46(m)(1)(A) and (B), and (n)(3), by failing to conduct an annual inspection of the water system's ground storage tank, by failing to conduct an annual inspection of the facility's pressure tank, and by failing to maintain copies of well completion data; PENALTY: $1,092; ENFORCEMENT COORDINATOR: Christopher Miller, (512) 239-6580; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(39) COMPANY: Rosamond Corporation dba JRS Mart; DOCKET NUMBER: 2006-1950-PST-E; IDENTIFIER: RN101885911; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and THSC, §382.085(b), by failing to verify proper operation of the Stage II equipment; 30 TAC §334.50(b)(2) and (b)(2)(A)(i)(III), and the Code, §26.3475(a), by failing to provide proper release detection and by failing to test the line leak detectors; and 30 TAC §115.242(3) and THSC, §382.085(b), by failing to maintain the Stage II VRS; PENALTY: $6,300; ENFORCEMENT COORDINATOR: Thomas Greimel, (512) 239-5690; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(40) COMPANY: Sherwin Alumina, L.P.; DOCKET NUMBER: 2004-1982-AIR-E; IDENTIFIER: RN102318847, Air Account Number SD0037N; LOCATION: near Gregory, San Patricio County, Texas; TYPE OF FACILITY: bauxite refining; RULE VIOLATED: 30 TAC §101.201(a)(2)(H) and (I) and THSC, §382.085(b), by failing to meet the minimum reporting requirements for a reportable emissions event; and 30 TAC §111.111(a)(1)(B) and §116.115(c), Permit Number 48455, Special Conditions 1 and 7, and THSC, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $20,488; Supplemental Environmental Project (SEP) offset amount of $10,244 applied to University of Texas-Corpus Christi Air Monitoring and Surveillance Camera Installation and Operation; ENFORCEMENT COORDINATOR: Audra Ruble, (361) 825-3100; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(41) COMPANY: City of Somerville; DOCKET NUMBER: 2006-1883-PWS-E; IDENTIFIER: RN101397008; LOCATION: Somerville, Burleson County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.113(f)(4) and THSC, §341.0315(c), by exceeding the maximum contaminant level for total trihalomethanes; PENALTY: $760; ENFORCEMENT COORDINATOR: Andrea Linson-Mgbeoduru, (512) 239-1482; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(42) COMPANY: Southwest Convenience Stores, LLC dba 7-Eleven; DOCKET NUMBER: 2006-1261-AIR-E; IDENTIFIER: RN102388345, RN102397189, RN102394756, RN100826239, RN102383627, RN102394368, RN102392214, RN102391331, RN102390960, RN102393170, and RN102399094; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: convenience stores with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.252(2) and THSC, §382.085(b), by failing to comply with the maximum seven pounds per square inch absolute Reid vapor pressure requirements; PENALTY: $11,380; ENFORCEMENT COORDINATOR: Jason Kemp, (512) 239-5610; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(43) COMPANY: Southwestern Bell Telephone, L.P.; DOCKET NUMBER: 2006-1954-AIR-E; IDENTIFIER: RN102387826; LOCATION: El Paso, El Paso County, Texas; TYPE OF FACILITY: gasoline station for their fleet vehicles; RULE VIOLATED: 30 TAC §114.100(a) and THSC, §382.085(b), by failing to comply with the minimum 2.7% by weight oxygenated fuel requirement for gasoline; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Daniel Siringi, (409) 898-3883; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(44) COMPANY: SpeeDee Oil Change, Inc.; DOCKET NUMBER: 2006-1814-PST-E; IDENTIFIER: RN102453685; LOCATION: Richardson, Dallas County, Texas; TYPE OF FACILITY: oil change facility; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; and 30 TAC §334.7(d)(3), by failing to submit an amended UST registration; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Patricia Chawla, (512) 239-0739; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(45) COMPANY: Jayvik Auto Systems, Inc. dba SpeeDee Oil Change & Tune Up; DOCKET NUMBER: 2006-2238-PST-E; IDENTIFIER: RN100539923; LOCATION: Carrollton, Denton County, Texas; TYPE OF FACILITY: automotive service and repair shop; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Shontay Wilcher, (512) 239-2136; REGIONAL OFFICE: 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(46) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2006-1220-WQ-E; IDENTIFIER: RN104535356; LOCATION: Nacogdoches County, Texas; TYPE OF FACILITY: construction site; RULE VIOLATED: 30 TAC §281.25(a)(4), 40 CFR §122.26(a), TPDES General Permit Number TXR150000 Part III Section F(2)(a)(ii) and (iii), and the Code, §26.121(d), by failing to maintain the best management practices (BMP) structures and by failing to install BMP structures; and the Code, §26.121(d), by failing to prevent the unauthorized discharge of sediment into water in the state; PENALTY: $1,050; Supplemental Environmental Project (SEP) offset amount of $840 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Wastewater Treatment Assistance; ENFORCEMENT COORDINATOR: Ruben Soto, (512) 239-4571; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(47) COMPANY: Texas Petrochemicals LP; DOCKET NUMBER: 2007-0073-AIR-E; IDENTIFIER: RN100219526; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: chemical manufacturing; RULE VIOLATED: 30 TAC §116.115(c), TCEQ Air Permit Number 46307, Special Condition Number 1, and THSC, §382.085(b), by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1) and (c) and THSC, §382.085(b), by failing to submit the initial notification within 24 hours and the final report within two weeks of the end of the September 24, 2006, emissions event; PENALTY: $31,336; ENFORCEMENT COORDINATOR:

Nadia Hameed, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(48) COMPANY: Valero Refining-Texas, L.P.; DOCKET NUMBER: 2007-0028-IWD-E; IDENTIFIER: RN100214386; LOCATION: Corpus Christi, Nueces County, Texas; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: 30 TAC §305.125(1), (9), and (19), TPDES Permit Number WQ0001909000 Permit Conditions Number 2.g., Monitoring and Reporting Requirements Number 7.a., Permit Conditions Number 1.a., and the Code, §26.121(a), by failing to prevent the unauthorized discharge of slop oil, untreated process wastewater, and process area storm water, by failing to submit written notification to the Corpus Christi regional office and TCEQ within five working days of a discharge event, and by failing to promptly notify the executive director when becoming aware that incorrect information was included in a permit application; PENALTY: $37,370; ENFORCEMENT COORDINATOR: Merrilee Hupp, (512) 239-4490; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(49) COMPANY: City of West; DOCKET NUMBER: 2006-1436-MWD-E; IDENTIFIER: RN102079282; LOCATION: West, McLennan County, Texas; TYPE OF FACILITY: wastewater treatment system; RULE VIOLATED: 30 TAC §305.125(1), (4), and (5), TPDES Permit Number WQ0010544001, Effluent Limitations and Monitoring Requirements Number 6, Permit Conditions Number 2(d), and the Code, §26.121(a), by failing to comply with permitted effluent limitations and by failing to prevent the unauthorized discharge and accumulation of sludge in the receiving stream; PENALTY: $11,825; Supplemental Environmental Project (SEP) offset amount of $9,460 applied to Texas Association of Resource Conservation and Development Areas, Inc. ("RC&D") - Abandoned Tire Clean-Up; ENFORCEMENT COORDINATOR: Lynley Doyen, (512) 239-1364; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(50) COMPANY: Windwood Water System, Inc.; DOCKET NUMBER: 2006-1772-PWS-E; IDENTIFIER: RN101456168; LOCATION: Harris County, Texas; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.41(c)(1)(F) and (c)(3)(O), by failing to obtain a sanitary control easement and by failing to maintain the gate on the fence surrounding the well facilities locked; 30 TAC §290.121(a), by failing to maintain a copy of the up-to-date chemical and microbiological monitoring plan; 30 TAC §290.42(1), by failing to maintain a plant operations manual; 30 TAC §290.46(f)(3)(B)(iii) and (n)(2), by failing to provide chlorine residual monitoring records for review and by failing to maintain a copy of the current distribution system map; and 30 TAC §290.110(e)(4), by failing to submit the disinfection level quarterly reports; PENALTY: $1,575; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200700447
Mary R. Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 13, 2007

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Notice of District Petition

Notice Issued February 13, 2007

TCEQ Internal Control No. 01292007-D02; GR-M1, Ltd. (Petitioner) filed a petition for creation of Brazoria County Municipal Utility District No. 56 (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states the following: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there are no lien holders on the property to be included in the proposed District; (3) the proposed District will contain approximately 495.04 acres located within Brazoria County, Texas; and (4) the proposed District is within the corporate boundaries of the City of Manvel, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Resolution No. 2007-R-02, effective January 8, 2007, the City of Manvel, Texas, gave its consent to the creation of the proposed District. According to the petition, the Petitioner has conducted a preliminary investigation to determine the cost of the project and, from the information available at the time, the cost of the project is estimated to be approximately $20,000,000.

INFORMATION SECTION

The TCEQ may grant a contested case hearing on this petition if a written hearing request is filed within 30 days after the newspaper publication of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en Español, puede llamar al (512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200700487
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 14, 2007

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the pro-

posed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075 this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 26, 2007**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 26, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing**.

(1) COMPANY: Azman Incorporated dba Shoppers Mart 1; DOCKET NUMBER: 2004-1286-PST-E; TCEQ ID NUMBER: RN102795689; LOCATION: 5032 Pinemont Drive, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking correction action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operations of petroleum underground storage tanks; PENALTY: $2,120; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY Casey Croy; DOCKET NUMBER: 2006-0191-MSW-E; TCEQ ID NUMBER: RN104789045; LOCATION: 2324 Farm-to-Market Road 2909, Hamilton, Hamilton County, Texas; TYPE OF FACILITY: unauthorized municipal solid waste site; RULES VIOLATED: 30 TAC §330.5(c), by causing, suffering, allowing, or permitting the dumping or disposal of municipal solid waste without the written authorization of the commission; PENALTY: $1,070; STAFF ATTORNEY: Alfred Oloko, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(3) COMPANY: Demecio Chavez; DOCKET NUMBER: 2006-0311-LII-E; TCEQ ID NUMBER: RN103929485; LOCATION: 758 Walker Street, Center, and 342 Greenwood Drive, Center, Shelby County, Texas (the "Site"); TYPE OF FACILITY: nursery; RULES VIOLATED: 30 TAC §30.5(a) and §344.4(a), Texas Water Code, §37.003, and Texas Occupations Code, §1903.251, by failing to obtain a landscape irrigator license from the commission prior to selling, designing, and installing a landscape irrigation system at the Site; PENALTY: $625; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Lin Song dba A Plus Cleaners; DOCKET NUMBER: 2006-0871-DCL-E; TCEQ ID NUMBER: RN104148283; LOCATION: 6350 Glenview Drive, Suite 105, North Richland Hills, Tarrant County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.11(e) and Texas Health and Safety Code (THSC), §374.102, by failing to renew the facility's registration; PENALTY: $1,185; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Sonny Nguyen dba Crystal Cleaners & Alteration; DOCKET NUMBER: 2006-0677-DCL-E; TCEQ ID NUMBERS: RN102315876 and RN100715721; LOCATION: 7847 Shoal Creek Boulevard and 2030 East Oltorf Street, Suite 108, Austin, Travis County, Texas; TYPE OF FACILITY: two dry cleaners; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102(a), by failing to complete and submit the required registration form to the TCEQ for dry cleaning and/or drop station facilities; PENALTY: $2,370; STAFF ATTORNEY: Shawn Slack, Litigation Division, MC 175, (512) 239-0063; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(6) COMPANY: Zul Noorane dba Best Cleaners; DOCKET NUMBER: 2006-1213-DCL-E; TCEQ ID NUMBER: RN104209259; LOCATION: 19620 Kuykendahl Road, Suite 130, Spring, Harris County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to renew the facility's registration by completing and submitting the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: $1,185; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-200700445
Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 13, 2007

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **March 26, 2007**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required

to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on March 26, 2007**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO shall be submitted to the commission in **writing**.

(1) COMPANY: Duininck Brothers, Inc. dba Duininck Brothers Construction Company; DOCKET NUMBER: 2004-1091-PST-E; TCEQ ID NUMBERS: RN102265972 and 65411; LOCATION: 4701 North Highway 377, Roanoke, Denton County, Texas; TYPE OF FACILITY: road construction equipment storage and maintenance company; RULES VIOLATED: 30 TAC §334.50(b)(2), and Texas Water Code (TWC), §26.3475(a), by failing to provide proper release detection for the product piping associated with underground storage tank (UST) systems; 30 TAC §334.8(c)(4)(B) and TWC, §26.346(c)(3), by failing to ensure that the UST registration and self-certification form is fully and accurately completed, and submitted to the agency in a timely manner; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before receiving a delivery of a regulated substance into the USTs; and 30 TAC §115.245(2), and Texas Health and Safety Code (THSC), §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months or upon major system replacement or modification, whichever occurs first; PENALTY: $6,000; STAFF ATTORNEY: Robert Mosley, Litigation Division, MC 175, (512) 239-0627; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Nara Management, Inc. dba Nara Cleaners; DOCKET NUMBER: 2006-1097-DCL-E; TCEQ ID NUMBER: RN104992128; LOCATION: 2501 North Fry Road, Suite C, Katy, Harris County, Texas; TYPE OF FACILITY: active dry cleaning drop station facility; RULES VIOLATED: 30 TAC §337.10(a) and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for the facility; PENALTY: $1,185; STAFF ATTORNEY: Mark Curnutt, Litigation Division, MC 175, (512) 239-0624; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Salim Aziz Dossani dba Short Trip Food Mart; DOCKET NUMBER: 2005-0365-PST-E; TCEQ ID NUMBER: RN100860626; LOCATION: 8703 Boone Road, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(2) and §334.49(c)(4), and TWC, §26.3475(d), by failing to have a qualified corrosion specialist or corrosion technician regularly inspect the cathodic protection system at least once every 60 days and test the system for operability and adequacy of protection at least once every three years; 30 TAC §334.50(b)(1)(A), (b)(2)(A)(i)(III), and (d)(1)(B)(ii) and TWC, §26.3475(a) and (c)(1), by failing to put the automatic tank gauge in test mode to perform an automatic test at least once per month to monitor USTs for releases; by failing to monitor the piping of the UST system in a manner designed to detect the releases from any portion of the piping system; and by failing to reconcile inventory control records on a monthly basis, sufficiently accurate to detect a release as small as the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; 30 TAC §334.72(2) and §334.74(2), by failing to report a suspected release within 24 hours of the discovery and conduct release investigations and confirmation steps within 30 days of discovery of a suspected release; 30 TAC §334.48(c), by failing to conduct inventory control of all USTs involved in the retail sale of petroleum substances used as a motor fuel; and 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: $16,585; STAFF ATTORNEY: Rachael Gaines, Litigation Division, MC 175, (512) 239-0078; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: Song Jung dba New Core Cleaners; DOCKET NUMBER: 2006-0793-DCL-E; TCEQ ID NUMBER: RN104962287; LOCATION: 1512 East Exchange Parkway, Suite 300, Allen, Collin County, Texas; TYPE OF FACILITY: dry cleaning drop station; RULES VIOLATED: 30 TAC §337.10(a), and THSC, §374.102, by failing to complete and submit the required registration form to the TCEQ for a dry cleaning and/or drop station facility; PENALTY: $1,185; STAFF ATTORNEY: Mary Hammer, Litigation Division, MC 175, (512) 239-2496; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: The City of Cockrell Hill; DOCKET NUMBER: 2005-0702-PWS-E; TCEQ ID NUMBER: RN101185320; LOCATION: 4125 West Clarendon Drive, Cockrell Hill, Dallas County, Texas; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §290.109(f)(3), and §290.122(b)(2)(A), and THSC, §341.031(a); by failing to provide public notice of the August 2003, and August - December 2004 violations within the statutorily required time frame; and 30 TAC §290.109(c)(3)(A)(i) and §290.122(c)(2)(A), by failing to collect additional water samples as required after positive coliform bacteria samples in October and November 2004, and by failing to provide public notice of those violations within the statutorily required time frame; PENALTY: $6,525; Supplemental Environmental Project (SEP) offset amount of $6,525 applied to Texas Association of Resource Conservation and Development Areas, Inc. for a Household Hazardous Waste Collection program; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: The City of Elsa; DOCKET NUMBER: 2004-0026-MWD-E; TCEQ ID NUMBER: RN101610251; LOCATION: 0.5 miles southwest of Farm-to-Market Road 1925 and State Highway 88 near Elsa, Hidalgo County, Texas; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1), Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011510002, Permit Conditions No. 2.g., and TWC, §26.121(a), by failing to prevent an unauthorized discharge of wastewater or any other waste; 30 TAC §305.125(1) and TPDES Permit No. WQ0011510002, Other Requirements No. 1, by failing to ensure that the facility was operated and maintained by a chief operator or operator-in-charge holding a valid class C certificate of competency or higher; 30 TAC §305.125(1), TWC, §26.121(a)(1), and TPDES Permit No. WQ0011510002, Effluent Limitations and Monitoring Requirements No. 1, by failing to comply with the permitted effluent single grab limit of 60 milligram per liter (mg/L) for total suspended solids (TSS); 30 TAC §317.3(c)(2), by failing to ensure that the firm pumping capacity of all of the facility's on-site lift stations was such that the expected peak flow could be pumped to its desired destination; 30 TAC §305.125(1) and (5) and TPDES Permit No. WQ0011510002,

Operational Requirements No. 1, by failing to ensure that the oxidation ditch treatment unit was properly operated and maintained; 30 TAC §305.125(1) and (5) and TPDES Permit No. WQ0011510002, Operational Requirements No. 1, by failing to ensure that the return lines from the digester and sludge drying beds were properly operated and maintained; 30 TAC §305.125(1), and TWC, §26.121(a)(1), and TPDES Permit No. WQ0011510002, Effluent Limitations and Monitoring Requirements No. 4, by failing to prevent the discharge of floating solids or visible foam in other than trace amounts in the receiving stream; and 30 TAC §21.4 and §290.51(a)(3) and TWC, §5.702 and §26.0291, by failing to pay all outstanding consolidated water quality fees and public health service fees; PENALTY: $16,385; Supplemental Environmental Project (SEP) offset amount of $16,385 contribution to be used in the Texas Association of Resource Conservation and Development Areas, Inc., Abandoned Tire Clean-Up Project which provides the coordinated clean-up of sites where tires have been disposed of illegally; STAFF ATTORNEY: James Biggins, Litigation Division, MC R-12, (713) 422-8916; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(7) COMPANY: The Texas Latin American Conference of the International Pentecostal Holiness Church; DOCKET NUMBER: 2005-1708-PWS-E; TCEQ ID NUMBER: RN101218493; LOCATION: six miles west of Jacksonville, south of United States (US) 79, Cherokee County, Texas; TYPE OF FACILITY: public water supply system; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(B), and THSC, §341.033(d), by failing to collect and submit a routine monthly bacteriological sample, and, by failing to notify the public of the noncompliance during the month of August 2003; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(B), by failing to take four repeat samples for each total coliform-positive sample found in a month and by failing to notify the public of these noncompliances during the months of March, May, and June 2004; 30 TAC §290.109(c)(2)(F) and §290.122(c)(2)(B), by failing to collect at least five routine bacteriological samples following the month in which a positive coliform sample was obtained and by failing to post public notice during the month of April 2004; and 30 TAC §290.109(f)(3) and §290.122(c)(2)(B) and THSC, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) for coliform bacteria and by failing to notify the public of this noncompliance during the months of May and June 2004; PENALTY: $2,363; STAFF ATTORNEY: Kari Gilbreth, Litigation Division, MC 175, (512) 239-1320; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(8) COMPANY: Wallach Concrete, Inc; DOCKET NUMBER: 2005-0586-AIR-E; TCEQ ID NUMBERS: RN104452560 and RN104452404; LOCATION: 612 Southeast Avenue F, Seminole, Gaines County, (the Seminole Plant), and 1601 West Broadway Street, Andrews, Andrews County, Texas (the Andrews Plant); TYPE OF FACILITY: concrete batch plants; RULES VIOLATED: 30 TAC §116.110(a), and THSC, §382.085(b) and §382.0518(a), by failing to obtain the proper authorization prior to construction and operation of two concrete batch plants; PENALTY: $20,000; STAFF ATTORNEY: Lena Roberts, Litigation Division, MC 175, (512) 239-0019; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

TRD-200700444
Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 13, 2007

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 101 and to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 101, General Air Quality Rules, and to the state implementation plan (SIP), under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency (EPA) regulations concerning SIPs.

The proposed rulemaking would correct references to sections of 30 TAC Chapter 117 which are changing due to the reorganization of Chapter 117. This rulemaking would also include revisions identified during the last review of Chapter 101, including changes to the definitions of visible emissions, cold solvent cleaning, conveyorized degreasing, open-top vapor degreasing, high-volume low-pressure spray guns, and standard conditions. A definition for nitrogen oxides would be added, the definitions of hazardous waste management facility and hazardous waste management unit would be deleted, references to the title of the commission would be corrected, and an obsolete effective date section would be removed.

A public hearing on this proposal will be held in Austin, Texas, on March 20, 2007, at 10:00 a.m., in Building B, Room 201A, at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Registration will begin 30 minutes prior to the hearing. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons planning to attend the hearing, who have special communication or other accommodation needs, should contact Lola Brown, Office of Legal Services, at (512) 239-0348. Requests should be made as far in advance as possible.

Comments may be submitted to Lola Brown, MC 205, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at *http://www5.tceq.state.tx.us/rules/ecomments*. The comment period closes March 26, 2007. All comments should reference Rule Project Number 2006-053-101-PR. The proposed rules may be viewed on the commission's Web site at *http://www.tceq.state.tx.us/nav/rules/propose_adopt.html*. For further information or questions concerning this proposal, please contact Becky Southard, Air Permits Division, at (512) 239-1638.

TRD-200700378
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: February 9, 2007

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Notice of Public Meeting on March 29, 2007, in Orange, Texas, Concerning the Spector Salvage Yard Proposed State Superfund Site.

The purpose of the meeting is to obtain public input and information concerning the proposed remedy for the site.

The executive director of the Texas Commission on Environmental Quality (TCEQ or commission) is issuing this public notice of a pro-

posed selection of remedy for the Spector Salvage Yard Proposed state Superfund site. In accordance with 30 TAC §335.349(a), concerning requirements for the remedial action, and Texas Health and Safety Code (THSC), §361.187, concerning the proposed remedial action, a public meeting regarding the commission's selection of a proposed remedy for the Spector Salvage Yard Proposed state Superfund site shall be held. The statute requires that the commission shall publish notice of the meeting in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located at least 30 days before the date of the public meeting. This notice was also published in the *Orange Leader* on February 23, 2007.

The public meeting is scheduled for March 29, 2007, at 7:00 p.m., in Council Chambers of the Orange Public Library, 220 North 5th Street in Orange, Texas. The public meeting is not a contested case hearing under the Texas Government Code, Chapter 2001.

The site for which a remedy is being proposed, the Spector Salvage Yard Proposed state Superfund site (the site), was proposed for listing on the state registry of Superfund sites in the July 16, 1999, edition of the *Texas Register* (24 TexReg 5593-5594). The site is located in the southern portion of the city of Orange, Orange County, Texas, and covers approximately four acres. It is bordered by Polk Street and the Union Pacific Railroad tracks to the north, Jackson Street and the Evergreen Cemetery to the south, a railroad right-of-way and railroad yard to the east, and the City of Orange sewage treatment plant to the west. Historic activities at the site resulted in the contamination of soil and groundwater with heavy metals, chlorinated and nonchlorinated hydrocarbons, and other chemicals of concern (COCs).

The TCEQ received a request from the City of Orange fire marshall in 1993 after a number of drums were discovered during site clearing activities by the city. The TCEQ inspected the site, and instructed the site owner, Sammie Spector, to complete a site investigation and cleanup. In 1994, Sammie Spector demonstrated financial inability to pay for remedial activities. In 1996, the TCEQ undertook emergency actions which included consolidating drums under one of the onsite structures, and erecting a fence to restrict access to the site.

The TCEQ prepared the Hazard Ranking System (HRS) document in August 1998. The HRS is a numerically-based screening system that uses information from initial, limited investigations to assess whether a site qualifies for the state or federal Superfund program. Sites scoring 28.5 or greater may qualify for the federal Superfund program, while sites scoring 5 or greater may qualify for the state Superfund program. The site earned a score of 12.88.

The Remedial Investigation (RI), which includes field work, laboratory analysis, and interpretation of collected data for the purpose of determining the nature and extent of contamination associated with the site, was initiated in 2001. The RI Technical Memorandum, dated April 2004, includes a summary of the investigation activities. The investigation concluded that the shallow groundwater beneath the site is impacted by carbon tetrachloride, chloroform, and lead concentrations exceeding the Protective Concentration Level (PCL), also known as the cleanup level, applicable to the groundwater resource. The shallow surface soil at the site, from 0 to approximately 1 foot below grade, was found to have been impacted by semi-volatile organic contaminants, polychlorinated biphenyls (PCBs), and heavy metals, including lead and mercury. No off-site soil or sediment contamination was detected. A Screening Level Ecological Risk Assessment (SLERA) was completed in July 2005. The SLERA concluded that based on conservative factors applied in calculating ecological risk at the site, it is likely that actual ecological risk from site-related chemicals is not present.

In order to prevent additional releases of hazardous substances to the shallow groundwater beneath the site, the TCEQ will conduct a removal action in February and March 2007. The removal action will consist of the excavation and offsite disposal of surface soil which contains COCs in excess of appropriate cleanup levels.

As the shallow groundwater beneath the site contains COCs in excess of the appropriate cleanup levels, the TCEQ prepared a Focused Feasibility Study (FS) for Groundwater in December 2006. The Focused FS presented an evaluation of potential remedial alternatives to address these hazardous constituents. Based on this evaluation, the TCEQ proposes to establish a plume management zone (PMZ). A PMZ modifies the standard groundwater cleanup objectives by controlling and preventing the use of and exposure to the groundwater within the PMZ by recording institutional controls in the real property records. The institutional control would be placed on each property which overlies groundwater contaminated above the PCLs and would describe the specific area of the PMZ on the affected property.

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m. on March 28, 2007, **and should be sent in writing** to Carol Boucher, P.G., Project Manager, Texas Commission on Environmental Quality, Remediation Division, MC 136, P. O. Box 13087, Austin, Texas 78711-3087, or facsimile at (512) 239-2450. The public comment period for this action will end at the close of the public meeting on March 29, 2007.

A portion of the record for this site including documents pertinent to the proposed remedy is available for review during regular business hours at the Orange Public Library, 220 North Fifth Street, Orange, Texas 77630-5796, (409) 883-1086. Copies of the complete public record file may be obtained during business hours at the commission's Records Management Center, Building E, First Floor, Records Customer Service, MC 199, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking for person with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Information is also available regarding the state Superfund program at *www.tceq.state.tx.us/remediation/superfund/sites/index.html*.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-2501. Requests should be made as far in advance as possible.

For further information about this site or the public meeting, please call Bruce McAnally, TCEQ Community Relations, at (800) 633-9363, extension 2141.

TRD-200700438
Mary Risner
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: February 13, 2007

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Notice of Request for Public Comment and Notice of a Public Meeting for One Total Maximum Daily Load (TMDL)

The Texas Commission on Environmental Quality (TCEQ or commission) has made available for public comment one draft TMDL for bacteria in Upper Oyster Creek (Segment 1245) of the Brazos River Basin, located in Fort Bend County. The TCEQ will conduct a public meeting to receive comments on the draft TMDL. This announcement also constitutes notice that the TMDL will become part of the State Water Quality Management Plan upon approval by the United States Environmental Protection Agency (EPA).

Texas is required to develop TMDLs for impaired water bodies included in the State of Texas Clean Water Act, §303(d) list of impaired water bodies. A TMDL is a detailed water quality assessment that provides the scientific foundation to allocate pollutant loads in a certain body of water in order to restore and maintain designated uses.

The TCEQ will conduct a public meeting on the draft TMDL for bacteria in Upper Oyster Creek (Segment 1245). The purpose of the public meeting is to provide the public an opportunity to comment on the draft TMDL. The commission requests comment on each of the six major components of the TMDL: problem definition, endpoint identification, source analysis, linkage between sources and receiving waters, margin of safety, and pollutant loading allocation. After the public comment period, TCEQ staff may revise the TMDL, if appropriate. The final TMDL will then be considered by the commission for adoption. Upon adoption of the TMDL by the commission, the final TMDL and a response to all comments will be made available on the TCEQ Web site referenced below. The TMDL will then be submitted to EPA Region 6 for approval. Upon approval, the TMDL will be certified as an update to the State of Texas Water Quality Management Plan.

The public comment meeting will be held on March 15, 2007, at 7:00 p.m., at the Sugar Land Community Center, 226 Matlage Way, Sugar Land, Texas 77478. At this meeting individuals have the opportunity to present oral statements when called upon in order of registration. There will be no agenda or presentations given, open discussion will not occur during the meeting. However, an agency staff member will be available to discuss the matter 30 minutes prior to the meeting and will answer questions before and after all public comments have been received.

Written comments should be submitted to Jason Leifester, Texas Commission on Environmental Quality, Water Programs Division, MC 203, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1414. All comments must be received by **5:00 p.m., March 26, 2007**, and should reference, *One Total Maximum Daily Load for Bacteria in Upper Oyster Creek, For Segment Number 1245*. For further information regarding the draft TMDL, please contact Jason Leifester, Water Programs Division, at (512) 239-6457 or *jleifest@tceq.state.tx.us*. Copies of the draft TMDL document will be available and can be obtained via the commission's Web site at: *http://www.tceq.state.tx.us/implementation/water/tmdl/index.html* or by calling (512) 239-6682.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the commission at (512) 239-6682. Requests should be made as far in advance as possible.

TRD-200700439

Robert Martinez

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: February 13, 2007

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Notice of Water Quality Applications

The following notices were issued during the period of February 8, 2007.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

AUC GROUP, L.P. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014744001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 980,000 gallons per day. The facility will be located 6,500 feet east of the intersection of State Highway 288 and County Road 57 on the east side of the West Fork of Chocolate Bayou in Brazoria County, Texas.

AQUA UTILITIES, INC. has applied for a renewal of TPDES Permit No. WQ0014018001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility will be located approximately 9.9 miles west of the intersection of State Highway 105 and Interstate 45 and approximately 600 feet directly west of the intersection of State Highway 105 and Lake Conroe Village Boulevard in Montgomery County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 34 has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0012298002, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility is located approximately 0.25 mile north of the intersection of Farm-to-Market Road 1093 and Katy-Gaston Road in Fort Bend County, Texas.

KATY INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. 12110-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located just north of South Mayde Creek, approximately 2 miles west-northwest of the intersection of Barker-Cypress Road and Interstate Highway 10, approximately 8 miles east of the City of Katy in Harris County, Texas.

REID ROAD MUNICIPAL UTILITY DISTRICT NO. 1 has applied for a renewal of TPDES Permit No. WQ0011563001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,750,000 gallons per day. The facility is located at 10015 Gusty Wind Road, approximately 3,600 feet south of the intersection of Windfern Road and Perry Road and approximately 1.1 miles east-southeast of the intersection of Farm-to-Market Road 1960 and Jones Road in Harris County, Texas.

TEXAS DEPARTMENT OF TRANSPORTATION has applied for a renewal of TPDES Permit No. 11958-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located along and within the right-of-way of Interstate Highway 35, at a point approximately 8 miles south of the City of Waxahachie central business district and 1.4 miles north of Farm-to-Market Road 329 in Ellis County, Texas.

U.S. LAND CORP. has applied for a renewal of TPDES Permit No. 13960-001 which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 22,500 gallons per day. The facility is located approximately 2.36 miles southwest of Shepard Cemetery, 2.15 miles northwest of the Lewis Creek Power Station and approximately 3.13 miles northeast of the east end of the Farm-to-Market Road 1097 bridge across Lake Conroe in Montgomery County, Texas.

WEST HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 11 has applied for a renewal of TPDES Permit No. WQ0013689001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,500,000 gallons per day. The facility is located adjacent to the west side of Sam Houston Toll Road and the north side of a Harris County Flood Control Ditch, south of West Road and east of Whiteoak Bayou in Harris County, Texas.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

If you need more information about these permit applications or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200700478
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 14, 2007

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Notice of Water Rights Application

Notices issued February 8, 2007, and February 9, 2007

APPLICATION NO. 12108; Great Southern Realty Co., 2292 Mountain Drive, Lake Hills, Texas, 78063, applicant, has applied for a Water Use Permit to maintain a dam and reservoir (Twin Lakes Dam No. 1) on an unnamed tributary of Bandera Creek, San Antonio River Basin, for in-place recreational purposes in Bandera County. The application and a portion of the required fees were received on September 22, 2006. Additional information and fees were received on December 8, 2006. The application was declared administratively complete and filed with the Office of the Chief Clerk on January 4, 2007. Written public comments and requests for a public meeting should be received in the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 14-998A; Patty Cervenka, applicant, HC 72, Box 29, Norton, TX 76865, has applied for an amendment to Certificate of Adjudication No. 14-998 to add three upstream diversion points and add industrial/mining use to a 100 acre-feet portion of the authorized water for a period of five years on the Colorado River, Colorado River Basin in Coke and Runnels Counties. The application was received on December 13, 2006. The application was declared administratively complete and accepted for filing on January 3, 2007. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by March 1, 2007.

INFORMATION SECTION

To view the complete issued notices, view the notices on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any: (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing"; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments, or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us. Si desea información en Español, puede llamar al 1-800-687-4040.

TRD-200700486
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 14, 2007

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Office of the Governor

Request for Grant Applications (RFA) for the Victims of Crime Act (VOCA) Fund Program

The Criminal Justice Division (CJD) of the Governor's Office is soliciting applications for projects that provide services to victims of crime under the state fiscal year 2008 grant cycle.

Purpose: The purpose of the VOCA Fund Program is to provide services and assistance directly to victims of crime to speed their recovery and aid them through the criminal justice process. Services may include the following:

(1) responding to the emotional and physical needs of crime victims;

(2) assisting victims in stabilizing their lives after a victimization;

(3) assisting victims to understand and participate in the criminal justice system; and

(4) providing victims with safety and security.

Available Funding: Federal funding is authorized for these projects under the Victims of Crime Act of 1984 (VOCA) as amended, 42 U.S.C. 10601 et seq. As of the date of the issuance of this RFA, the U.S. Congress has not finalized federal appropriations for federal fiscal year 2007. All awards are subject to the availability of appropriated funds and any modifications or additional requirements that may be imposed by law.

Funding Levels: Minimum grant award - $5,000.

Required Match: Grantees, other than Native American Tribes, must provide matching funds of at least twenty percent (20%) of total project expenditures. Native American Tribes must provide a five percent (5%) match. This requirement may be met through cash and/or in-kind contributions.

Standards: Grantees must comply with the standards applicable to this funding source contained in the Texas Administrative Code, Title 1, Part 1, Chapter 3 and the requirements of the federal statutes that authorize this funding.

Prohibitions: Grant funds may not be used to support the following services, activities, and costs:

(1) proselytizing or sectarian worship;

(2) lobbying and administrative advocacy;

(3) perpetrator rehabilitation and counseling or services to incarcerated individuals;

(4) needs assessments, surveys, evaluations, and studies;

(5) prosecution activities;

(6) reimbursing crime victims for expenses incurred as a result of the crime;

(7) most medical costs. Grantees may not use grant funds for nursing-home care (except for short-term emergency), home health-care costs, in-patient treatment costs, hospital care, or other types of emergency or non-emergency medical or dental treatment. Grant funds cannot support medical costs resulting from a crime, except for forensic medical examinations for sexual assault victims;

(8) relocation expenses. Grant funds may not support relocation expenses for crime victims such as moving expenses, security deposits on housing, rent, and mortgage payments;

(9) administrative staff expenses. Grantees may not use grant funds to pay salaries, fees and reimbursable expenses associated with administrators, board members, executive directors, consultants, coordinators, and other individuals unless the grantee incurs the expense while providing direct services to crime victims. Grant funds may support administrative time to complete VOCA-required time and attendance sheets and programmatic documentation, reports and statistics, administrative time to maintain crime victims' records, and the prorated share of audit costs;

(10) development of protocols, interagency agreements, and other working agreements;

(11) costs of sending individual crime victims to conferences;

(12) activities exclusively related to crime prevention or community awareness;

(13) non-emergency legal representation such as for divorces or civil restitution recovery efforts;

(14) victim-offender meetings that serve to replace criminal justice proceedings;

(15) management and administrative training for executive directors, board members, and other individuals that do not provide direct services;

(16) training to persons or groups outside the applicant agency;

(17) indirect organization costs such as the following: liability insurance on buildings; major maintenance of buildings; capital improvements; newsletters, including supplies, printing, postage, and staff time; security guards and body guards; and employment agency fees;

(18) any activities or related costs for diligent search;

(19) job skills training;

(20) alcohol and drug abuse treatment;

(21) fundraising activities; and

(22) property loss. Grant funds may not be used to reimburse crime victims for expenses incurred as a result of a crime, such as insurance deductibles, replacement of stolen property, funeral expenses, lost wages, and medical bills.

Eligible Applicants:

(1) State agencies;

(2) Units of local government;

(3) Hospital districts;

(4) Nonprofit corporations;

(5) Native American tribes;

(6) Crime control and prevention districts;

(7) Universities;

(8) Colleges;

(9) Community supervision and corrections departments;

(10) Councils of governments that offer direct services to victims of crime;

(11) Hospital and emergency medical facilities that offer crisis counseling, support groups, and/or other types of victims services; and

(12) Faith-based organizations that provide direct services to victims of crime. Faith-based organizations must be tax-exempt nonprofit entities as certified by the Internal Revenue Service.

Project Requirements: Grant funds can support the following services, activities, and costs:

(1) Immediate Health and Safety. Projects should provide services that respond to the immediate emotional and physical needs (excluding medical care) of crime victims, such as crisis intervention, accompanying victims to hospitals for medical examinations, providing victims with hotline counseling, emergency food, clothing, transportation, and shelter, and providing emergency services intended to restore the victim's sense of security.

(2) Mental Health Assistance. These services include aid that assists the primary and secondary victims of crime.

(3) Assistance with Participation in Criminal Justice Proceedings. Projects should help victims participate in the criminal justice system.

(4) Forensic Examinations. Forensic examinations are allowable costs only for sexual assault victims and only to the extent that other funding sources are unavailable or insufficient to pay for the examinations. The examinations must conform to state evidentiary collection requirements.

(5) Costs Necessary and Essential to Providing Direct Services. These include prorated costs of rent, telephone service, transportation costs for victims to receive services, emergency transportation costs that enable a victim to participate in the criminal justice system, and local travel expenses for service providers.

(6) Special Services. These include services to assist crime victims with managing practical problems created by victimization including the following:

(A) acting on behalf of the victim with other service providers, creditors, or employers;

(B) assisting the victim to recover property retained as evidence;

(C) assisting in filing for compensation benefits; and

(D) helping the victim to apply for public assistance.

(7) Personnel Costs. These include costs directly related to providing services such as staff salaries and fringe benefits and including mal-

practice insurance, costs for advertising to recruit grant-funded personnel, and costs to train paid and volunteer staff.

(8) Restorative Justice. Opportunities for a crime victim to meet with the offender who perpetrated the crime against the victim, if such meetings are requested or voluntarily agreed to by the victim and have possible beneficial or therapeutic value to the victim.

(9) Other Allowable Costs and Services. CJD does not consider the following services, activities, and costs as direct crime victim services, but recognizes that they are often an essential activity necessary to ensure that the grantee can provide high quality direct services. Before grantees can use grant funds to pay for these services, activities, and costs, CJD and the grantee must agree that the grantee cannot provide direct services to crime victims without additional support for the expenses, that the grantee has no other source of pecuniary support for them, and that the grantee will limit the use of grant funds in paying for them. These services, activities, and costs include:

(A) Skill training for staff. Grant funds designated for training shall be used exclusively for developing the skills of direct service providers.

(B) Training and related travel for staff. This includes the cost of travel, meals, lodging and registration fees for staff that provide direct services to victims of crime.

(C) Equipment and furniture.

(D) Purchase or lease of vehicles. Grantees must obtain CJD approval in writing before purchasing or leasing vehicles.

(E) Advanced technologies. This covers information technology costs associated with purchasing systems, software, or equipment that expand a grantee's ability to reach and serve crime victims.

(F) Contracts for specialized professional services. Grantees may not use a majority of grant funds for contracted services that provide administrative, overhead, and other indirect costs. Examples of specialized professional services include the following:

(i) assistance in filing restraining orders or establishing emergency custody or visitation rights;

(ii) emergency psychological or psychiatric services; or

(iii) interpretation for the deaf or for crime victims whose primary language is not English.

(G) Operating costs.

(H) Supervision of direct service providers.

(I) Repair or replacement of essential items.

(J) Training materials for staff.

(K) Public Presentations. Grant funds may be used to support presentations that are made in schools, community centers, or other forums, that are designated to identify crime victims and provide or refer them to needed services.

Requirements: All applicants must meet each of the following criteria:

(1) have a record of providing effective services to victims. (If not, the applicant must show that at least twenty-five percent (25%) of its financial support comes from non-federal sources.);

(2) use volunteers, unless CJD determines that a compelling reason exists to waive this requirement;

(3) promote community efforts to aid crime victims;

(4) assist crime victims in applying for crime victims' compensation benefits;

(5) maintain civil rights information;

(6) provide equal services to victims of federal crime;

(7) provide grant-funded services at no charge to victims;

(8) maintain the confidentiality of client-counselor information and research data; and

(9) not discriminate against victims because they disagree with the way the State is prosecuting the criminal case.

Project Period: Grant-funded projects must begin on or after July 1, 2007, and expire on or before June 30, 2008.

Application Process: Applicants must access CJD's grant management website at https://cjdonline.governor.state.tx.us to register and apply for funding.

Preferences: Preference will be given to applicants that demonstrate cost effective programs that incorporate multiple disciplines into one comprehensive approach to provide services. An example of this type of approach is advocacy, law enforcement, prosecution, and other government and non-government services working together under a single project to restore victims to full mental, emotional and physical health in a professional environment of cooperation and respect among the service providers. In an effort to streamline administrative and reporting processes, grantees are encouraged to consolidate grant requests whenever possible in lieu of submitting multiple applications.

Closing Date for Receipt of Applications: All applications must be submitted via CJD's grant management website on or before April 2, 2007.

Selection Process:

(1) For eligible local and regional projects:

(A) Applications are forwarded by CJD to the appropriate regional council of governments (COG).

(B) The COG's criminal justice advisory committee will prioritize all eligible applications based on identified community and/or comprehensive planning, cost and program effectiveness.

(C) CJD will accept priority listings that are approved by the COG's executive committee.

(D) CJD will make all final funding decisions based upon approved COG priorities, reasonableness of the project, availability of funding, and cost-effectiveness.

(2) For state discretionary projects, applications will be reviewed by CJD staff members or a group selected by the executive director of CJD. CJD will make all final funding decisions based on eligibility, reasonableness of the project, availability of funding, and cost-effectiveness.

Contact Person: If additional information is needed, contact Lori Melcher at lmelcher@governor.state.tx.us or (512) 463-1919.

TRD-200700485
Christopher Burnett
Assistant General Counsel
Office of the Governor
Filed: February 14, 2007

♦ ♦ ♦

Texas Health and Human Services Commission

Notification of Consulting Procurement - Request for Proposals (RFP #529-07-0044)

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Health and Human Services Commission (HHSC) announces the release of its Request for Proposals (RFP #529-07-0044) for Consultant Services to Assist in the Procurement of the Texas Medicaid/Children with Special Healthcare Needs Claims (CSHCN) and Medicaid Primary Care Case Management (PCCM) Administrator Contract and the Pharmacy Claims and Rebate Administration (PCRA) Contract. HHSC seeks to contract with a single qualified consultant to fulfill the requirements pursuant to this RFP.

The primary objective for this procurement is to seek the assistance of a consultant with certain expertise to help HHSC with the procurement of the Texas Medicaid/CSHCN and Medicaid PCCM Administrator contract and PCRA contract. The primary objective also requires a consultant to assist the state in development of a procurement strategy that will allow vendors to submit a proposal for only the services required under the Texas Medicaid/CSHCN Claims and PCCM Administrator Contract requirements; submit a proposal for only the services required under the PCRA Contract; or submit a proposal to provide services for Texas Medicaid/CSHCN Claims and PCCM Administrator Contract requirements and PCRA contract under a single contract with HHSC.

The RFP is located in full on HHSC's Business Opportunities Page under Contracting Opportunities link at: http://www.hhsc.state.tx.us/about_hhsc/BusOpp/BO_opportunities.asp . HHSC also posted notice of the procurement on the Texas Marketplace on February 16, 2007.

The successful contractor will be expected to assist in the procurement of the Medicaid/CSHCN Claims and PCCM Administration contract and the PCRA contract. This assistance may include, but is not limited to:

* Gather and validate user requirements;

* Draft and/or review sections of the draft RFP;

* Assist in the development of the final RFP;

* Facilitate discussions with HHSC and other state agencies to determine solutions to operational issues;

* Help HHSC respond to numerous vendor questions on the draft and final RFP, including assisting in the determining solutions to issues brought up in vendor questions; and

* Help HHSC to develop and draft an Advanced Planning Document that HHSC will submit to the Centers for Medicare and Medicaid Services to obtain prior federal approval to release the final RFP.

Health and Human Services Commission's Sole Point-Of-Contact for Procurement

Lyn Peters

Health and Human Services Commission

Enterprise Contracts and Procurement Services (ECPS) Division

909 West 45th Street, Bldg 1

Austin, Texas 78751

(512) 206-5504

lyn.peters@hhsc.state.tx.us

All proposals must be received at the above-referenced address on or before 3:00 p.m. Central Time on March 19, 2007. Proposals received after this time and date will not be considered.

All proposals will be subject to evaluation based on the criteria and procedures set forth in the RFP. HHSC reserves the right to accept or reject any or all proposals submitted. HHSC is under no legal or other obligation to execute any contracts on the basis of this notice. HHSC will not pay for costs incurred by any entity in responding to this RFP.

TRD-200700495
David Brown
Assistant General Counsel
Texas Health and Human Services Commission
Filed: February 14, 2007

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Public Notice - STAR+PLUS 1915(b) Waiver

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to its existing STAR+PLUS 1915(b) waiver to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The amendment will be implemented in two phases; and the proposed effective dates are May 1, 2007 and September 1, 2007.

The purpose of the amendment to the 1915(b) waiver is to phase in the capitation payments for inpatient behavioral health services made to Managed Care Organizations (MCOs) contracted with HHSC under the STAR+PLUS waiver program. Inpatient behavioral health services resulting from a behavioral health primary diagnosis will be included in the capitation payments to the contracted MCOs serving the Harris Service Area (Harris County only) effective May 1, 2007 and to the contracted MCOs serving the expanded geographic area under the STAR+PLUS waiver program effective September 1, 2007. The following 28 counties comprise the expanded geographic area: Atascosa, Bexar, Comal, Guadalupe, Kendall, Medina, and Wilson Counties (Bexar Service Area); Brazoria, Fort Bend, Galveston, Montgomery, and Waller counties (Harris/Harris Expansion Service Area); Aransas, Bee, Calhoun, Jim Wells, Kleberg, Nueces, Refugio, San Patricio, and Victoria counties (Nueces Service Area); and Bastrop, Burnet, Caldwell, Hays, Lee, Travis, and Williamson counties (Travis Service Area).

The proposed amendment to the waiver is estimated to result in cost savings of approximately $8,464,857 in federal Fiscal Year 2007, with approximately $5,144,940 in cost savings in federal funds and $3,319,917 in cost savings in state general revenue. The amendment is estimated to result in cost savings of approximately $17,740,124 in federal Fiscal Year 2008, with approximately $10,766,481 in cost savings in federal funds and $6,973,643 in cost savings in state general revenue.

To obtain copies of the proposed waiver amendments, interested parties may contact Betsy Johnson by mail at Texas Health and Human Services Commission, P.O. Box 85200, mail code H-620, Austin, Texas 78708-5200; by telephone at (512) 491-1199; by facsimile at (512) 491-1953; or by e-mail at betsy.johnson@hhsc.state.tx.us.

TRD-200700496
David Brown
Assistant General Counsel
Texas Health and Human Services Commission
Filed: February 14, 2007

♦ ♦ ♦

Department of State Health Services

Designation of The University of Texas at Austin School of Nursing Family Wellness Center as a Site Serving Medically Underserved Populations

The Department of State Health Services (department) is required under the Occupations Code, §157.052, to designate sites serving medi-

cally underserved populations. In addition, the department is required to publish notice of such designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has proposed designating the following as a site serving medically underserved populations: The University of Texas at Austin, School of Nursing Family Wellness Center, 2901 North IH 35, Suite 101, Austin, Texas 78722. The designation is based on the clinic being located in an area with an insufficient number of physicians providing services to eligible client populations.

Oral and written comments on this designation may be directed to Brian King, Program Director, Health Professions Resource Center, Center for Health Statistics, Department of State Health Services, 1100 West 49th Street, Austin, Texas 78756; telephone (512) 458-7261. Comments will be accepted for 30 days from the publication date of this notice.

TRD-200700494
Cathy Campbell
General Counsel
Department of State Health Services
Filed: February 14, 2007

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Announcement of the 2007 Public Hearing Schedule for Comment on 2007 Competitive Housing Tax Credit Applications

The Department's mission is to help Texans achieve a higher quality of life by building better communities. Through our rental production programs, the Department encourages the new construction or rehabilitation of high-quality multifamily housing, primarily through private developers. These developments benefit Texans by providing qualified families with safe, affordable, quality housing.

The following 13 public hearings are provided to gather public comment on the 2007 Competitive Housing Tax Credit Applications. The schedule of these meetings is provided below:

San Antonio, Region 9

Monday, April 2

12:00 p.m.

Henry B. Gonzalez Convention Center, Room 103A

200 E. Market St.

San Antonio, TX 78205

(210) 207-8109

www.sanantonio.gov

Austin, Region 7

Monday, April 2

6:00 p.m.

William B. Travis Building Room 1-111

1701 N. Congress

Austin, Texas 78701

(512) 475-3991

www.tdhca.state.tx.us

Waco, Region 8

Tuesday, April 3

11:00 a.m.

Heart of Texas Council of Governments Training Room

1514 S. New Road

Waco, TX 76711

(254) 756-7822

www.hotcog.org

San Angelo, Region 12

Tuesday, April 3

12:00 p.m.

City Council Chambers

72 West College Avenue

San Angelo, TX 76902

(325) 657-4241

www.sanangelotexas.us

El Paso, Region 13

Wednesday, April 4

1:00 p.m.

County Commissioners Courtroom, 3rd floor

El Paso County Courthouse

500 E. San Antonio

El Paso, TX 79901

(915) 546-2009

www.epcounty.com

Lubbock, Region 1

Wednesday, April 4

3:00 p.m.

Godeke Branch Library Community Room

6601 Quaker Ave.

Lubbock, TX 79413

(806) 775-2826

http://library.ci.lubbock.tx.us/

Dallas, Region 3

Wednesday, April 4

7:00 p.m.

J. Erik Jonsson Central Library Auditorium

1515 Young Street

Dallas, TX 75201

(214) 670-7846

http://dallaslibrary.org/

Wichita Falls, Region 2

Thursday, April 5

10:00 a.m.

Nortex Regional Planning Commission Conference Room

4309 Jacksboro Hwy. Ste. 200

Wichita Falls, TX 76302

(940) 322-5281

www.nortexrpc.org

Corpus Christi, Region 10

Thursday, April 5

10:00 a.m.

Council Chambers, Committee Room

City Hall, 1201 Leopard

Corpus Christi, TX 78401

(361) 826-3105

www.cctexas.com

Harlingen, Region 11

Thursday, April 5

3:00 p.m.

Harlingen Public Library Auditorium

410 '76 Drive

Harlingen, TX 78550

(956) 430-6650

Houston, Region 6

Tuesday, April 10

6:00 p.m.

City Hall Annex Chambers Public Level

900 Bagby

Houston, TX 77002

(713) 247-1840

www.houstontx.gov

Lufkin, Region 5

Wednesday, April 11

9:00 a.m.

City Hall Room 102

300 East Shepherd (Entrance on 3rd Street)

Lufkin, TX 75904

(936) 633-0244

www.cityoflufkin.com

Longview, Region 4

Wednesday, April 11

2:00 p.m.

Longview Public Library, Moeschle Room

222 West Cotton Street

Longview, TX 75601

(903) 237-1341

www.longviewlibrary.com

A detailed log of all 2007 Applications will be posted to the Department's website at the following link: http://www.tdhca.state.tx.us

Written comments are also encouraged. Such comments should be addressed to:

Multifamily Finance Production Division

Texas Department of Housing and Community Affairs

P.O. Box 13941

Austin, Texas 78711-3941

For additional information you may contact the Multifamily Division at (512) 475-3440 or visit the program's web site at www.tdhca.state.tx.us.

Individuals who require auxiliary aids or services for these meetings should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3942 or Relay Texas at (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Individuals who require a language interpreter for the hearing should contact Jorge Reyes at (512)475-4577 at least three days prior to the hearing date. Personas que hablan español y requieren un intérprete, favor de llamar a Jorge Reyes al siguiente número (512) 475-4577 por lo menos tres días antes de la junta para hacer los preparativos apropiados.

TRD-200700490

Michael Gerber

Executive Director

Texas Department of Housing and Community Affairs

Filed: February 14, 2007

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Texas Department of Insurance

Company Licensing

Application to change the name of SCOR LIFE U.S. RE INSURANCE COMPANY to SCOR GLOBAL LIFE U.S. RE INSURANCE COMPANY, a domestic life, accident and/ or health company. The home office is in Addison, Texas.

Application to change the name of ENDURANCE REINSURANCE CORPORATION OF AMERICA to the assumed in Texas of ENDURANCE WORKERS' COMPENSATION INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in White Plains, New York.

Application to change the name of SERVUS LIFE INSURANCE COMPANY to XL RE LIFE AMERICA INC., a foreign life, accident and/or health company. The home office is in Wilmington, Delaware.

Application to change the name of MUTUAL SERVICE CASUALTY INSURANCE COMPANY to STOCKBRIDGE INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Minneapolis, Minnesota.

Application for incorporation to the State of Texas by VALLEY ASSURANCE COMPANY, a domestic fire and/or casualty company. The home office is in Harlingen, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200700488
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: February 14, 2007

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application of VERISOURCE SERVICES, INC., a domestic third party administrator. The home office is DALLAS, TEXAS.

Application of ADVANCED INSURANCE BROKERAGE OF AMERICA, INC. (using the assumed name ADVANCED INSURANCE ADMINISTRATION), a foreign third party administrator. The home office is LITTLE ROCK, ARKANSAS.

Any objections must be filed within 20 days after this notice is published in the *Texas Register*, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200700492
Gene C. Jarmon
Chief Clerk and General Counsel
Texas Department of Insurance
Filed: February 14, 2007

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Texas Lottery Commission

Instant Game Number 782 "Game of Life"

1.0 Name and Style of Game.

A. The name of Instant Game No. 782 is "THE GAME OF LIFE". The play style is "match 3 of 6".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 782 shall be $3.00 per ticket.

1.2 Definitions in Instant Game No. 782.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $3.00, $5.00, $8.00, $10.00, $20.00, $35.00, $50.00, $60.00, $75.00, $100, $150, $350, $3,500 or $35,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 782 - 1.2D

PLAY SYMBOL	CAPTION
$3.00	THREE$
$5.00	FIVE$
$8.00	EIGHT$
$10.00	TEN$
$20.00	TWENTY
$35.00	TRY FIV
$50.00	FIFTY
$60.00	SIXTY
$75.00	SVY FIV
$100	ONE HUND
$150	HUND FTY
$350	THR FTY
$3,500	35 HUND
$35,000	35 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 782 - 1.2E

CODE	PRIZE
THR	$3.00
FIV	$5.00
EGT	$8.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $3.00, $5.00, $8.00, $10.00 or $20.00.

H. Mid-Tier Prize - A prize of $35.00, $50.00, $60.00, $75.00, $100, $150, or $350.

I. High-Tier Prize - A prize of $3,500 or $35,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (782), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 125 within each pack. The format will be: 782-0000001-001.

L. Pack - A pack of "THE GAME OF LIFE" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). There will be 2 fanfold configurations for this game. Configurations A will show the front of ticket 001 and the back of ticket 125. Configuration B will show the back of ticket 001 and the front of ticket 125.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "THE GAME OF LIFE" Instant Game No. 782 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "THE GAME OF LIFE" Instant Game is determined once the latex on the ticket is scratched off to expose 30 (thirty) Play Symbols. On the GAME BOARD, the player advances from "START" the number of spaces shown in "SPIN 1", counting START CAREER as the first space. The player advances from that space the number of spaces shown in "SPIN 2". Repeat the same instructions in consecutive order for "SPINs" 3 through 6. Scratch only the spaces you land on. If a player reveals 3 matching amounts play symbols, the player wins that amount. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 30 (thirty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 30 (thirty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 30 (thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 30 (thirty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. There will be at least two (2) but no more than five (5) sets of three (3) matching GAME BOARD prize symbols per ticket.

C. A ticket may only win once.

D. There will be at least two (2) pairs of matching GAME BOARD prize symbols scratched on non-winning tickets.

E. No three (3) or more like SPIN play symbols per ticket.

F. The total of all six (6) SPIN play symbols will not exceed twenty-four (24).

G. The player will always complete the game within the last four (4) squares on the Game Board.

H. The $35,000 prize symbol will be revealed at least once but no more than twice on all non-winning tickets.

2.3 Procedure for Claiming Prizes.

A. To claim a "THE GAME OF LIFE" Instant Game prize of $3.00, $5.00, $8.00, $10.00, $20.00, $35.00, $50.00, $60.00, $75.00, $100, $150 or $350, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $35.00, $50.00, $60.00, $75.00, $100, $150 or $350 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "THE GAME OF LIFE" Instant Game prize of $3,500 or $35,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "THE GAME OF LIFE" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General;

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "THE GAME OF LIFE" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "THE GAME OF LIFE" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 782. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 782 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$3	624,000	9.62
$5	336,000	17.86
$8	192,000	31.25
$10	96,000	62.50
$20	48,000	125.00
$35	24,000	250.00
$50	12,000	500.00
$60	10,000	600.00
$75	7,500	800.00
$100	5,000	1,200.00
$150	3,600	1,666.67
$350	1,300	4,615.38
$3,500	50	120,000.00
$35,000	12	500,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.41. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 782 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 782, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200700454
Kimberly Kiplin
General Counsel
Texas Lottery Commission
Filed: February 13, 2007

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Instant Game Number 797 "Bonus Break the Bank"

1.0 Name and Style of Game.

A. The name of Instant Game No. 797 is "BONUS BREAK THE BANK". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 797 shall be $5.00 per ticket.

1.2 Definitions in Instant Game No. 797.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, STACK OF BILLS SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $15.00, $20.00, $25.00, $50.00, $100, $500, $1,000, $7,500 or $75,000.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 797 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
STACK OF BILLS SYMBOL	WIN$
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$

$15.00	FIFTN
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$7,500	75 HUND
$75,000	75 THOU

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 797 - 1.2E

CODE	PRIZE
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $5.00, $10.00, $15.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100 or $500.

I. High-Tier Prize - A prize of $1,000, $7,500 or $75,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (797), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 075 within each pack. The format will be: 797-0000001-001.

L. Pack - A pack of "BONUS BREAK THE BANK" Instant Game tickets contains 75 tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 001 and back of 075 while the other fold will show the back of ticket 001 and front of 075.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BONUS BREAK THE BANK" Instant Game No. 797 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BONUS BREAK THE BANK" Instant Game is determined once the latex on the ticket is scratched off to expose 38 (thirty-eight) Play Symbols. If a player matches any of YOUR NUMBERS play symbols to any of the LUCKY NUMBERS play symbols within the same game, the player wins prize shown for that number. If a player reveals a money stack play symbol, the player wins the prize shown instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 38 (thirty-eight) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 38 (thirty-eight) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 38 (thirty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 38 (thirty-eight) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning Your Numbers play symbols on a ticket.

C. No duplicate Lucky Numbers play symbols on a ticket.

D. No more than four like non-winning prize symbols on a ticket.

E. A non-winning prize symbol will never be the same as a winning prize symbol.

F. No prize amount in a non-winning spot will correspond with the Your Number play symbol (i.e. 5 and $5).

G. The auto win symbol will never appear more than once in a game, but may appear once in both games on tickets that win 2 or more times.

H. No Your Number play symbol in one game will match a Lucky Number play symbol in the other game.

2.3 Procedure for Claiming Prizes.

A. To claim a "BONUS BREAK THE BANK" Instant Game prize of $5.00, $10.00, $15.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100 or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "BONUS BREAK THE BANK" Instant Game prize of $1,000, $7,500 or $75,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BONUS BREAK THE BANK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BONUS BREAK THE BANK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "BONUS BREAK THE BANK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,000,000 tickets in the Instant Game No. 797. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 797 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	2,800,000	5.36
$10	1,000,000	15.00
$15	400,000	37.50
$20	200,000	75.00
$50	200,000	75.00
$100	37,500	400.00
$500	2,000	7,500.00
$1,000	375	40,000.00
$7,500	40	375,000.00
$75,000	21	714,285.71

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.23. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 797 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 797, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200700434
Kimberly Kiplin
General Counsel
Texas Lottery Commission
Filed: February 12, 2007

♦ ♦ ♦

Instant Game Number 822 "Find the 9's"

1.0 Name and Style of Game.

A. The name of Instant Game No. 822 is "FIND THE 9'S". The play style is "match 3 of 6 with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 822 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 822.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the instant ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: $1.00, $2.00, $3.00, $5.00, $30.00, $50.00, $300 and 9.

D. Play Symbol Caption - the printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 822 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$3.00	THREE$
$5.00	FIVE$
$30.00	THIRTY
$50.00	FIFTY
$300	THR HUND
9	NINE

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 822 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
THR	$3.00
FIV	$5.00
NIN	$9.00
NNT	$19.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $3.00, $5.00, $9.00 or $19.00.

H. Mid-Tier Prize - A prize of $30.00, $50.00, $90.00 or $300.

I. High-Tier Prize - A prize of $999.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (822), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 822-0000001-001.

L. Pack - A pack of "FIND THE 9'S" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 146 to 150 will be on the last page with backs exposed. Tickets 001 will be folded over so the front of ticket 001 and 010 will be exposed.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "FIND THE 9'S" Instant Game No. 822 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "FIND THE 9'S" Instant Game is determined once the latex on the ticket is scratched off to expose 6 (six) Play Symbols. If a player reveals 3 matching amounts in the play area the player wins that amount. If a player reveals any 9 play symbols in the play area the player wins the corresponding prize in the prize legend. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 6 (six) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 6 (six) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 6 (six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 6 (six) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No ticket will contain two sets of three matching prize amounts.

C. No ticket will contain 4 or more like prize amounts.

D. No ticket will contain more than four "9" play symbols.

E. No ticket will contain one or more "9" symbols and three like prize symbols.

F. The "9" play symbol will only appear on intended winning tickets as dictated by the prize structure.

G. Tickets can only win once (and will win only the highest amount shown).

2.3 Procedure for Claiming Prizes.

A. To claim a "FIND THE 9'S" Instant Game prize of $1.00, $2.00, $3.00, $5.00, $9.00, $19.00, $30.00, $50.00, $90.00 or $300, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $30.00, $50.00, $90.00 or $300 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "FIND THE 9'S" Instant Game prize of $999, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "FIND THE 9'S" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "FIND THE 9'S" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "FIND THE 9'S" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 20,160,000 tickets in the Instant Game No. 822. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 822 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	2,520,000	8.00
$2	940,800	21.43
$3	403,200	50.00
$5	235,200	85.71
$9	168,000	120.00
$19	67,200	300.00
$30	21,000	960.00
$50	12,600	1,600.00
$90	10,584	1,904.76
$300	420	48,000.00
$999	168	120,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.60. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 822 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 822, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200700455
Kimberly Kiplin
General Counsel
Texas Lottery Commission
Filed: February 13, 2007

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Instant Game Number 824 "Break the Bank"

1.0 Name and Style of Game.

A. The name of Instant Game No. 824 is "BREAK THE BANK". The play style is "key number match with auto win".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 824 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 824.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - The printed data under the latex on the front of the ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, $1.00, $2.00, $4.00, $6.00, $10.00, $20.00, $50.00, $200, $1,000, $3,000, $30,000, and MONEYSTACK SYMBOL.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 824 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$6.00	SIX$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$200	TWO HUND
$1,000	ONE THOU
$3,000	THR THOU
$30,000	30 THOU
MONEYSTACK SYMBOL	WIN$

E. Retailer Validation Code - Three (3) letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. These three (3) small letters are for validation purposes and cannot be used to play the game. The possible validation codes are:

Figure 2: GAME NO. 824 - 1.2E

CODE	PRIZE
TWO	$2.00
FOR	$4.00
SIX	$6.00
EGT	$8.00
TEN	$10.00
TWL	$12.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $4.00, $6.00, $8.00, $10.00, $12.00 or $20.00.

H. Mid-Tier Prize - A prize of $50.00 or $200.

I. High-Tier Prize - A prize of $1,000, $3,000 or $30,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (824), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001and end with 125 within each pack. The format will be: 824 -0000001-001.

L. Pack - A pack of "BREAK THE BANK" Instant Game tickets contains 125 tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One ticket will be folded over to expose a front and back of on ticket on each pack. Please note the books will be in an A, B, C and D configuration.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "BREAK THE BANK" Instant Game No. 824 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "BREAK THE BANK" Instant Game is determined once the latex on the ticket is scratched off to expose 19 (nineteen) play symbols. If the player matches any of YOUR NUMBERS play symbols to any of the 3 LUCKY NUMBERS play symbols, the player wins the prize shown for that number. If the player reveals a "moneystack" symbol, the player wins the prize instantly. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 19 (nineteen) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 19 (nineteen) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 19 (nineteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 19 (nineteen) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another un-

played ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Non-winning prize symbols will not match a winning prize symbol on a ticket.

C. No duplicate Lucky Numbers play symbols on a ticket.

D. There will be no correlation between the matching symbols and the prize amount.

E. The auto win symbol will never appear more than once on a ticket.

F. No duplicate non-winning play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "BREAK THE BANK" Instant Game prize of $2.00, $4.00, $6.00, $8.00, $10.00, $12.00, $20.00, $50.00 or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not in some cases, required to pay a $50.00 or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "BREAK THE BANK" Instant Game prize of $1,000, $3,000 or $30,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "BREAK THE BANK" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Health and Human Services Commission for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "BREAK THE BANK" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "BREAK THE BANK" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code Section 466.408. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 25,200,000 tickets in the Instant Game No. 824. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 824 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	2,268,000	11.11
$4	1,461,600	17.24
$6	403,200	62.50
$8	100,800	250.00
$10	252,000	100.00
$12	302,400	83.33
$20	151,200	166.67
$50	93,450	269.66
$200	20,790	1,212.12
$1,000	525	48,000.00
$3,000	77	327,272.73
$30,000	12	2,100,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.99. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 824 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 824, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200700435
Kimberly Kiplin
General Counsel
Texas Lottery Commission
Filed: February 12, 2007

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Texas Board of Professional Engineers

Policy Advisory Opinion Regarding Comprehensive Building Design - February 8, 2007

The Texas Board of Professional Engineers is given authority to issue Advisory Opinions under Subchapter M, Chapter 1001 of the Occupations Code (Texas Engineering Practice Act). The Board is required to issue an advisory opinion about interpretations of the Texas Engineering Practice Act in regard to a specific existing or hypothetical factual situation if requested by a person and to respond to that request within 180 days. Pursuant to that requirement, the Board hereby presents the following final Policy Advisory Opinion regarding Comprehensive Building Design. The Board, upon a written request to issue a Policy Advisory regarding the engineering aspects of comprehensive building design, has developed a stakeholder process to gather information from professional engineers, architects and consultants. The Texas Board of Professional Engineers approved the "Policy Advisory Opinion Regarding Comprehensive Building Design" on February 8, 2007 in a public meeting.

Executive Summary: The Texas Board of Professional Engineers (Board) has been asked to determine if the practice of engineering includes comprehensive and complete design of buildings by a competent engineer without the services of an architect. Attorney General (AG) Greg Abbott has released an opinion (GA-391) which provides additional information related to this policy advisory. The AG opinion states that building design can be performed exclusively by an engineer if the "adequate performance of the particular service or work in connection with that project requires a person with engineering education, training, and experience." The opinion goes on to state that "whether an adequate performance of a particular service or work requires a person with engineering education, training, and experience is a question of fact."

The Board has determined pursuant to the Advisory Opinion process outlined in Texas Administrative Code, Title 22, Part 6, Chapter 131,

Subchapter G, based on the present statute and rules, in addition to Attorney General opinions DM-161 and GA-391, that an engineer may engage in comprehensive and complete building design of a project without the involvement of an architect if the adequate performance of the particular service or work in connection with that project requires a person with engineering education, training, and experience.

The Board does recognize that architects have broad authority to manage and oversee building projects, which may include building design. Nothing in this opinion is intended to limit an architect's ability under their statutory authorization.

Discussion: The statute under Texas Occupations Code - Title 6, Subtitle A, Chapter 1001 (§1001.003) also known as the Texas Engineering Practice Act (Act), specifies that design is the practice of engineering and that a building is listed in conjunction with design under this section of the law. This opinion is based on the information contained in the Act as it relates to engineers, while not prohibiting building design by architects who are bound by the laws and rules of the Texas Board of Architectural Examiners (TBAE). The Act defines what is engineering and an excerpt from the beginning of the law in §1001.003 explains, in part:

Section 1001.003. Practice of Engineering

(c) The practice of engineering includes:

(10) a service, design, analysis, or other work performed for a public or private entity in connection with a utility, structure, building, machine, equipment, process, system, work, project, or industrial or consumer product or equipment of a mechanical, electrical, electronic, chemical, hydraulic, pneumatic, geotechnical, or thermal nature;

Buildings can be grouped into public works and private works as mentioned in various sections of the Act. This separation allows for further clarification of applicable law as it relates to these two categories. Engineering aspects of a public works project must be designed and constructed under the supervision of a licensed professional engineer, unless exempted under the Act.

When is building design exempted under the Act?

Under the Act there are several sections that provide exemptions from the licensure requirements when working on building projects. Specifically, §1001.053 contains some specific exemptions from the Act for public works projects, depending on the type of project and monetary value. Also, §1001.056 describes building projects for the private sector and defines when an engineer is not required to be involved with the building project.

Legislative Intent

Under §1001.004(b) of the Act, there is a description of the legislative purpose and intent as follows:

(b) The purpose of this chapter is to:

(1) protect the public health, safety, and welfare;

(2) enable the state and the public to identify persons authorized to practice engineering in this state; and

(3) fix responsibility for work done or services or acts performed in the practice of engineering.

In addition to specifying the purpose and intent of the statute, there are sections that also allow other individuals to perform work without being in violation of the Act. In other words, architects may design buildings without creating a situation where there would necessarily be a violation of the Act; however, the laws and rules of the TBAE would still apply to them, unless exempted. This is addressed in §1001.004(e) of the Act:

(e) This chapter does not:

(1) affect or prevent the practice of any other legally recognized profession by a member of the profession who is licensed by the state or under the state's authority.

Texas Engineering Practice Act Authority

The Board has the authority to issue an advisory opinion as stated in §1001.601 but, under §1001.603, it does not affect the authority of the Attorney General to issue an opinion as authorized by law. Attorney General opinion DM-161 dated August 27, 1992, relating to the construction of Section 16 of Article 249a V.T.C.S., the act regulating the practice of architecture, was requested by TBAE. In that opinion, Attorney General Dan Morales opined that the professions of architects and engineers overlap. In summary, General Morales opined that the statute regulating the practice of architecture "does not bar a licensed professional engineer licensed under article 3271a, V.T.C.S., (the predecessor to the current Engineering Practice Act) from preparing plans and specifications, the preparation of which requires the application of engineering principles and the interpretation of engineering data" for a public building. In other words, a professional engineer is not prohibited from being the design professional for construction or modification of buildings. Attorney General Opinion GA-391 dated January 10, 2006, further addresses the issue of overlap between the professions of architects and engineers concerning building design. General Abbott states that whether an engineer may engage in comprehensive and complete building design without the involvement of an architect "depend[s] on whether the adequate performance of the particular service or work in connection with that project requires a person with engineering education, training, and experience". He further states that "whether adequate performance of a particular service or work requires a person with engineering education, training, and experience is a question of fact."

TRD-200700404
Dale Beebe Farrow, P.E.
Executive Director
Texas Board of Professional Engineers
Filed: February 12, 2007

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Policy Advisory Opinion Regarding Record (As-Built) Drawings - February 8, 2007

The Texas Board of Professional Engineers is given authority to issue Advisory Opinions under Subchapter M, Chapter 1001 of the Occupations Code (Texas Engineering Practice Act). The Board is required to issue an advisory opinion about interpretations of the Texas Engineering Practice Act in regard to a specific existing or hypothetical factual situation if requested by a person and to respond to that request within 180 days. Pursuant to that requirement, the Board hereby presents the following final Policy Advisory Opinion regarding Record (As-Built) Drawings. The Board, upon a written request to issue a Policy Advisory regarding the engineering aspects of record drawings, has developed a stakeholder process to gather information from professional engineers, architects and consultants. The Texas Board of Professional Engineers approved the "Policy Advisory Opinion Regarding Record (As-Built) Drawings" on February 8, 2007 in a public meeting.

Executive Summary: The Texas Board of Professional Engineers (Board) frequently gets asked questions regarding record (as-built) drawings for construction projects. The Board has determined pursuant to the Policy Advisory Opinion process outlined in the Texas Administrative Code, Title 22, Part 6, Chapter 131, Subchapter G, these questions can be answered based on the present statute and rules. Signing and sealing record (as-built) drawings is not generally an

issue for public works projects since the Texas Engineering Practice Act (Act) requires a professional engineer to design and provide direct supervision of the engineering construction. Some projects may start out as a private construction project and then are later annexed by a municipality and become a public works project (water treatment facilities, subdivision infrastructure, etc). The city then requires that the record drawings be signed and sealed by a professional engineer. If the professional engineer was not involved in the construction phase of the project, they are very limited in what they can sign and seal. An engineer will only be able to attest to the accuracy of the drawings based on what they can actually confirm or observe after the fact. An engineer may include a caveat on the drawings with a notation stating their limited responsibility.

Statutory language: §1001.407. Construction of Certain Public Works

The state or a political subdivision of the state may not construct a public work involving engineering in which the public health, welfare, or safety is involved, unless:

(1) the engineering plans, specifications, and estimates have been prepared by an engineer; and

(2) the engineering construction is to be performed under the direct supervision of an engineer.

Public works: The Board has identified specific examples of projects that are considered public works. The attorney general has issued several opinions that include the following definition:

The term "public works" embraces all construction and improvements, ordinarily of a fixed nature, designed for public use, protection or enjoyment. Clearly included among public works are bridges, school buildings, waterworks, dams, sewers, canals and channels, levees and sea walls, wharves and piers, irrigation, reclamation and drainage projects, and highways and streets.

An engineer is required for the direct supervision of construction on all public works projects. These engineers are allowed to seal as-built drawings. Public works projects that do not meet the exemptions listed in the statute require the involvement of a licensed professional engineer.

What construction drawings would be exempted under the Act? In Subchapter B of the Act there are several sections that provide exemptions from the licensing requirements when working on building projects. Specifically, §1001.053 contains some specific exemptions from the Act for public works projects, depending on the type of project and monetary value. Also, §1001.056 lists specific building projects for the private sector when an engineer is not required to be involved with the building project. Therefore, projects of this type would not require the involvement of a license professional engineer.

Discussion: The Board frequently gets asked whether record (as-built) drawings need to be sealed by a professional engineer. There are situations in which an engineer may not be involved in the direct supervision of a construction project, but an official may require the "as-built" plans to be sealed. An engineer will only be able to attest to the accuracy of the drawings with a notation as to what he can actually confirm or observe. An engineer should not seal a record drawing that represents changes that he did not actually observe during construction. The Board does not consider documentation of what was actually constructed to be engineering. An engineer may include a caveat on such drawings with a notation, similar to that shown below, as to what he can actually confirm based on the information he can obtain through observation, interviews, samples, and other useful information. As an alternative he may choose to seal and sign a cover letter stating what he has determined to be "as-built" through his own research and attach it to the drawings or plans. The caveat should include the location of the signed and sealed design drawings. An example caveat may be written as follows:

This record drawing is a compilation of a copy of the sealed engineering drawing for this project; modified by addenda, change orders, and information furnished by the contractor. The information shown on the record drawings that was provided by the contractor or others not associated with the design engineer cannot be verified for accuracy or completeness. The original sealed drawings are on file at the offices of...

Conclusion: Professional engineers should inform their clients that an engineer is required to be involved in direct supervision of the engineering construction for public works projects as noted in the statute, §1001.407. Engineers should recommend to their clients that a licensed professional engineer be engaged to provide direct supervision of construction projects for private works that affect human health and safety. There are a number of projects that may become public through annexation or other means such as underground utilities and infrastructure, which directly affect public health and safety. In addition, development that occurs near urban areas needs professional engineering involvement during construction since the municipality will later require sealed record drawings. Licensed professional engineers are not obligated to seal record drawings. An engineer has the option of sealing the drawings with or without the caveat but can only seal what they personally observed or supervised.

TRD-200700405

Dale Beebe Farrow, P.E.

Executive Director

Texas Board of Professional Engineers

Filed: February 12, 2007

Public Utility Commission of Texas

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 6, 2007, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Brydels Communications, LLC d/b/a AMIGOS - Tu Compania de Telefonos for a Service Provider Certificate of Operating Authority, Docket Number 33848 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, and long distance service..

Applicant's requested SPCOA geographic area includes the geographic area of Texas currently served by AT&T Texas and Verizon Southwest.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than February 28, 2008. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 33848.

TRD-200700387

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 9, 2007

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Notice of Application to Amend Certificated Service Area Boundaries in Kerr County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 6, 2007, for an amendment to certificated service area boundaries within Kerr County, Texas.

Docket Style and Number: Joint Application of Kerrville Public Utility Board and Central Texas Electric Cooperative, Inc. for an Amendment for Service Area Boundaries within Kerr County. Docket Number 33850.

The Application: Kerrville Public Utility Board (KPUB) and Central Texas Electric Cooperative, Inc. (CTEC) request a service area boundary amendment to allow KPUB to serve the entire Phase 2, Section 2 of the Cypress Springs Subdivision. CTEC is in full agreement with the territory amendment. The amount of money expected to be expended on new facilities if the application is granted is approximately $150,000.00.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than March 2, 2007 by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 33850.

TRD-200700386
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 9, 2007

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Public Notice of Workshop - Rulemaking Relating to Advanced Metering

The staff of the Public Utility Commission of Texas (commission) will hold a technical workshop for the Rulemaking Related to Advanced Metering, on Friday, February 23, 2007, at 10:00 a.m. in Hearing Room Gee, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 31418, *Rulemaking Relating to Advanced Metering*, has been established for this proceeding. The purpose of this workshop is to discuss the settlement language in the proposed rule. Questions concerning the workshop or this notice should be referred to Christine Wright, Retail Market Analyst, Electric Industry Oversight, (512) 936-7376. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200700452
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 13, 2007

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Public Notice of Workshops Project 31418 - Rulemaking Relating to Advanced Metering

The staff of the Public Utility Commission of Texas (commission) will hold workshops on Thursday, March 22, and Friday, March 23, 2007, at 9:30 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 31418, Rulemaking Relating to Advanced Metering, has been established for this proceeding. The purpose of these workshops is to discuss the proposed rule issued on October 30, 2006. Questions concerning the workshops or this notice should be referred to Christine Wright, Retail Market Analyst, Electric Industry Oversight, (512) 936-7376. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200700483
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: February 14, 2007

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Rains County

Notice of Public Hearing and Request for Comments and Proposals: Additional Medicaid Beds

Texas Department of Aging and Disability Services (DADS) Rule 40 TAC §19.2333(h)(6) permits the county commissioners court of a rural county with a population of less than 100,000 and with no more than two Medicaid-Certified nursing facilities to request that DADS contract for additional Medicaid nursing facility beds in that county. This may be done without regard to the occupancy rate of available beds in the county. Qualifying under these guidelines, the Rains County Commissioners Court is considering requesting that DADS contract for additional Medicaid nursing facility beds in Rains County. The Commissioners Court is:

--seeking public input and comments on whether a new Medicaid nursing facility should be requested;

--seeking proposals from persons or entities interested in providing additional Medicaid-certified beds in Rains County, including persons or entities currently operating Medicaid-certified facilities with high occupancy rates.

Persons or entities that submit false information will be eliminated from the process.

Comments and proposals will be heard during a Public Hearing held on February 22, 2007, at 9:00 a.m. in the Rains County Courthouse Annex.

Written comments and proposals may be submitted to Judge Joe R. Dougherty at 337 North Street, P.O. Box 158, Emory, Texas 75440 by 4:30 p.m. CST on February 28, 2007.

TRD-200700433
Joe R. Dougherty
Rains County Judge
Rains County
Filed: February 12, 2007

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The University of Texas System

Award of Consultant Contract Notification

The University of Texas System Administration ("University"), in accordance with the provisions of *Texas Government Code*, Chapter 2254, entered into a contract for consulting services (the "Contract")

with Mercer Human Resources Consulting ("Consultant") as more particularly described in the invitation to consultants to provide offers of consulting services (the "Invitation"), published in the *Texas Register* on October 30, 2006.

Project Description:

In accordance with the Invitation and Consultant's response thereto, Consultant shall provide University with an executive compensation study.

Name and Address of Consultant:

Mercer Human Resource Consulting, 10 South Wicker Drive, Suite 1600, Chicago, IL 60606

Total Value of the Contract:

$121,000

Contract Dates:

The Contract was executed by Consultant on January 30, 2007 and by University on February 6, 2007, and dated effective January 19, 2007.

Due Dates for Contract Products:

The Executive Compensation Study shall be completed and delivered to University no later than May 31, 2007.

The term of the Contract shall terminate on December 31, 2009.

TRD-200700370
Francie A. Frederick
General Counsel to Board of Regents
The University of Texas System
Filed: February 9, 2007

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Amendment of Consultant Contract Notification

The University of Texas System ("University"), in accordance with the provisions of *Texas Government Code*, Chapter 2254, has amended and extended a contract for consulting services (the "Contract") with Paul J. Youngdale ("Consultant") as more particularly described in the Notice Before Entering into Major Consulting Services Contract (the "Invitation"), published in the *Texas Register* on December 15, 2006 (31 TexReg 10205).

Project Description:

In accordance with the Invitation and Consultant's response thereto, Consultant shall provide University with planned giving consulting. Mr. Youngdale will be available to the development staff at UT institutions to answer questions, provide training, accompany gift officers on visits with donors, and assist with other planned giving opportunities.

Name and Address of Consultant:

Paul J. Youngdale, 1610 Gaston Avenue, Austin, TX 78703

Total Value of the Contract:

$24,000 per annum from appropriated funds (ASF) + not more than $20,000 for travel expenses to be paid from local funds by institutions requesting consultant's services.

Due Dates for Contract Products:

Consultation with and training of U.T. development staff will be an ongoing responsibility.

Contract Dates:

The Contract Amendment was executed by Consultant on January 22, 2007, and by University on January 25, 2007. The contract can be terminated on 30 days' advance written notice by either party.

TRD-200700371
Francie A. Frederick
General Counsel to Board of Regents
The University of Texas System
Filed: February 9, 2007

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Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, Section 6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Panhandle Groundwater Conservation District, 201 West Third Street, P.O. Box 637, White Deer, Texas, 79097, received December 4, 2006, application for financial assistance in the amount of $500,000 from the Agricultural Water Conservation Loan Program.

Angelina and Neches River Authority, P.O. Box 387, 210 Lufkin Avenue, Lufkin, Texas, 75902, received August 28, 2006, application for an increase in financial assistance not to exceed $5,735,000 for a total commitment of $15,735,000 from the State Participation Account and Storage Acquisition Fund.

El Paso County Tornillo Water Improvement District, P.O. Box 136, Tornillo, Texas, 79853, received December 23, 2005, application for an increase in financial assistance in the amount of $8,195,621 grant/loan for a total commitment of $13,722,840 from the Economically Distressed Areas Program.

Flying L Ranch Public Utility District, 234 Briarwood Circle, Bandera, Texas, 78003, received December 1, 2006, application for financial assistance in the amount of $400,000 from the Texas Water Development Funds.

City of Cisco, 500 Conrad Hilton Avenue, P.O. Box 110, Cisco, Texas, 76437, received December 4, 2006, application for financial assistance in the amount of $2,905,000 from the Drinking Water State Revolving Fund - Disadvantaged Community Program.

Greater Texoma Utility Authority, on behalf of the City of Pottsboro, 5100 Airport Drive, Denison, Texas, 75020, received November 30, 2006, application for financial assistance in the amount of $1,745,000 from the Drinking Water State Revolving Fund.

City of Alba, P.O. Box 197, Alba, Texas, 75410, received November 30, 2006, application for financial assistance in the amount of $1,130,000 from the Drinking Water State Revolving Fund - Disadvantaged Community Program.

Houston County Water Control and Improvement District No. 1, P.O. Box 1246, Crocket, Texas, 75835, received November 27, 2006, application for financial assistance in the amount of $6,000,000 from the Drinking Water State Revolving Fund - Disadvantaged Community Program.

Seis Lagos Utility District, 220 Seis Lagos Trail, Wylie, Texas, 75098, received November 30, 2006, application for financial assistance in the amount of $1,360,000 from the Drinking Water State Revolving Fund.

Bright Star-Salem Water Supply Corporation, P.O. Box 620, Alba, Texas, 75410, received November 20, 2006, application for financial assistance in the amount of $5,930,000 from the Drinking Water State Revolving Fund.

Golden Water Supply Corporation, P.O. Box 148, Golden, Texas, 75444-0148, received November 14, 2006, application for financial assistance in the amount of $1,070,000 from the Drinking Water State Revolving Fund.

Lamar County Water Supply District, P.O. Box 188 (184 CR 32180), Brookston, Texas, 75421-0188, received November 16, 2006, application for financial assistance in the amount of $3,180,000 from the Drinking Water State Revolving Fund - Disadvantaged Community Program.

Lower Valley Water District, 1557 FM Road 1110, Clint, Texas, 79863, received November 28, 2006, application for financial assistance in the amount of $10,245,000 from the Drinking Water State Revolving Fund.

Harris County Municipal Utility District No. 50, c/o The GMS Group, L.L.C., 5075 Westheimer, Suite 1175, Houston, Texas, 77056-5606, received July 19, 2006, application for financial assistance in the amount of $1,500,000 from the Clean Water State Revolving Fund.

Porter Special Utility District, 22162 Water Well Road, Porter, Texas, 77365-5380, received November 29, 2006, application for financial assistance in the amount of $1,625,000 from the Drinking Water State Revolving Fund.

City of Trinidad, P.O. Box 345, Trinidad, Texas, 75163-0345, received November 16, 2006, application for financial assistance in the amount of $780,000 from the Clean Water State Revolving Fund - Disadvantaged Community Program.

City of Trinidad, P.O. Box 345, Trinidad, Texas, 75163-0345, received November 16, 2006, application for financial assistance in the amount of $410,000 from the Drinking Water State Revolving Fund - Disadvantaged Community Program.

City of Winters, 310 South Main, Winters, Texas, 79567, received November 30, 2006, application for financial assistance in the amount of $1,680,000 from the Drinking Water State Revolving Fund - Disadvantaged Community Program.

Bolivar Peninsula Special Utility District, P.O. Box 1398, Crystal Beach, Texas, received November 30, 2006, application for financial assistance in the amount of $5,785,000 from the Drinking Water State Revolving Fund.

Lake Livingston Water Supply and Sewer Service Corporation, 1930 North Washington, P.O. Box 1149, Livingston, Texas, 77351, received December 18, 2006, application for financial assistance in the amount of $17,500,000 from the Drinking Water State Revolving Fund -Disadvantaged Community Program.

City of Roscoe, 115 Cypress Street, P.O. Box 340, Roscoe, Texas, 79545, received December 15, 2006, application for financial assistance in the amount of $1,560,000 from the Clean Water State Revolving Fund - Disadvantaged Community Program.

Chatt Water Supply Corporation, Route 1, Box 265, Hillsboro, Texas, 76645, received November 2, 2006, application for financial assistance in the amount of $220,000 from the Rural Water Assistance Fund.

City of Commerce, 1119 Alamo Street, Commerce, Texas, 75428, received December 1, 2006, application for financial assistance in the amount of $2,005,000 from the Clean Water State Revolving Fund - Disadvantaged Community Program.

City of Fairfield, 222 South Mount Street, Fairfield, Texas, 75840, received November 30, 2006, application for financial assistance in the amount of $1,500,000 from the Drinking Water State Revolving Fund.

City of Groesbeck, 402 West Navasota, Groesbeck, Texas, 76642, received November 28, 2006, application for financial assistance in the amount of $2,000,000 from the Clean Water State Revolving Fund - Disadvantaged Community Program.

City of Hamilton, 200 East Main, Hamilton, Texas, 76531, received November 21, 2006, application for financial assistance in the total amount of $1,474,000 from the Drinking Water State Revolving Fund - Disadvantaged Community Program.

City of Midlothian, 104 West Avenue E, Midlothian, Texas, 76065, received November 20, 2006, application for financial assistance in the amount of $25,010,000 from the Drinking Water State Revolving Fund.

Sandy Land Underground Water Conservation District, 1012 Avenue F, P.O. Box 130, Plains, Texas, 79355, received January 29, 2007, application for financial assistance in the amount of $500,000 from the Agricultural Water Conservation Loan Program.

City of Higgins, 201 North Main, P.O. Box 56, Higgins, Texas, 79046, received December 4, 2006, application for financial assistance in the amount of $215,000 from the Rural Water Assistance Fund.

City of Marfa, 113 South Highland Street, P.O. Box 787, Marfa, Texas, 79843, received December 11, 2006, application for financial assistance in the amount of $1,265,000 from the Clean Water State Revolving Fund - Disadvantaged Community Program.

Red River County Water Supply Corporation, 1404 East Main Street, Clarksville, Texas, 75426, received November 30, 2006, application for financial assistance in the amount of $4,860,000 from the Drinking Water State Revolving Fund.

City of Sonora, 201 East Main, Sonora, Texas, 76950, received November 29, 2006, application for financial assistance in the amount of $3,000,000 from the Drinking Water State Revolving Fund.

City of Sonora, 201 East Main, Sonora, Texas, 76950, received November 29, 2006, application for financial assistance in the amount of $6,000,000 from the Clean Water State Revolving Fund.

Wellborn Special Utility District, 4118 Greens Prairie Road, Wellborn, Texas, 77881, received November 27, 2006, application for financial assistance in the amount of $3,500,000 from the Drinking Water State Revolving Fund.

City of Winters, 310 South Main, Winters, Texas, 79567, received November 30, 2006, application for financial assistance in the amount of $655,000 from the Clean Water State Revolving Fund.

R.W. Harden and Associates, Inc. 3400 Executive Center Drive, No. 228, Austin, Texas, 78731, received February 7, 2007, application for an increase in financial assistance in the amount of $25,000 from the Research and Planning Fund.

TRD-200700493
Jonathan Steinberg
Deputy Counsel
Texas Water Development Board
Filed: February 14, 2007

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 30 (2005) is cited as follows: 30 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "30 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 30 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For website subscription information, call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 21, April 15, July 8, and October 7, 2005). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).